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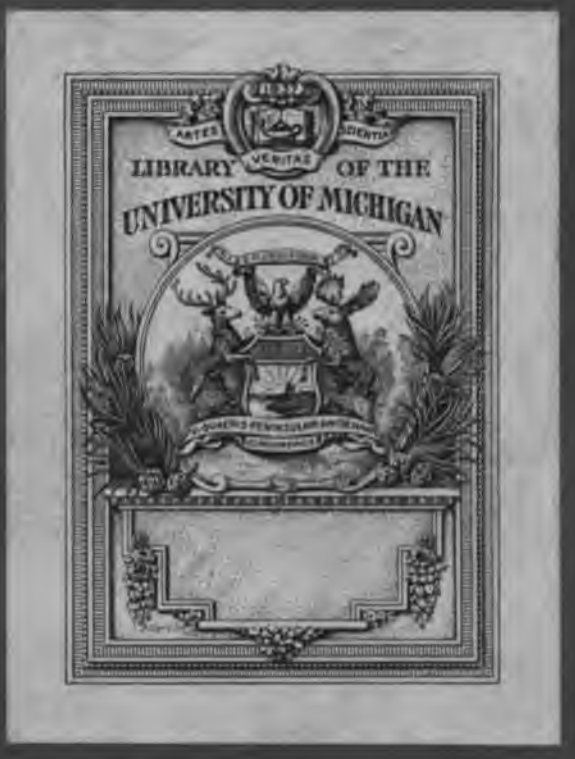
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THE

WRITINGS AND SPEECHES

OF

SAMUEL J. TILDEN

EDITED BY

JOHN BIGELOW

IN TWO VOLUMES

VOL. I.

NEW YORK
HARPER AND BROTHERS
1885

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PREFACE BY THE EDITOR.

WERE it necessary to assign any reason for gathering together, as it were under one roof, the writings and speeches of Mr. Tilden, it might be sufficient to say that they embody the political opinions and public teachings of one of the most profound and sagacious of modern statesmen upon the most important problems of American politics for the last half century, and that they ought therefore to be more accessible than they have been, scattered through the official documents and public prints in which they originally appeared.

Why the present time is chosen for such a publication may not be so obvious, and therefore merits a brief explanation.

When Mr. Tilden's letter appeared, in 1880, declining a renomination to the Presidency, I knew that it was his well-considered purpose never to return to public life. Soon after, with his permission, I proceeded to occupy myself with what I had often, but in vain, urged him to undertake, — a collection of his numerous contributions to the political science of his time; deeming it one of the educational agencies best adapted to check "the fungus-growth of false constructions and corrupt practices" which were threatening the character, if not the very existence, of our cherished political system. Though Mr. Tilden's declining health daily reinforced the consideration which led to his formal abdication in 1880, the political party with which his public life had been identified, and of which he had long been the head, experienced unexampled difficulties in transferring its allegiance to another leader.

As time wore on, the determination to re-nominate Mr. Tilden, regardless of his health or his personal inclinations, gathered strength and momentum. He alone of all the prominent statesmen of his party seemed day by day to expand and to assume continually enlarging proportions in popular estimation.[1]

With such a general demand from all sections for Mr. Tilden to resume the leadership of the opposition, any publication, with his assent, that would have had a tendency to commend him to the public esteem was liable not only to be construed by his friends as evidence of a relaxation of his resistance to the prevailing currents of public opinion, and to be made by his political opponents a pretext for impeaching the sincerity of his letter of 1880, but also to obstruct the execution of his well-considered purpose in respect to the choice of a successor.

That was obviously not the time, therefore, when Mr. Tilden's political writings would be likely to receive the dispassionate consideration to which they are entitled, or to answer the purposes contemplated by the Editor in selecting and preparing them for the press. Their publication was consequently deferred until such time as it would encounter no such mistrust,

[1] Early in the year 1884, as the time for choosing a candidate approached, the purpose to nominate Mr. Tilden threatened to be irresistible. The Democratic masses entertained the undoubting conviction that his nomination would assure success. This feeling was instinctive and pervading. Each one of the four million of voters who had given him their suffrages seemed to feel a sense of personal injury which transformed him from a comparatively indifferent voter into a proselyting canvasser. There was also a wide-spread disposition among Republicans who loved fair play to give their votes on the first opportunity in such a manner as to redress the wrong of 1876. Instances of this kind came within the knowledge of almost every Democratic voter, and were estimated at many thousands in number. Appeals were made in letters to Mr. Tilden and his friends by many eminent Democrats upon the ground that his candidacy could alone give success to their party in the Presidential election. But this idea of a re-nomination at no time received any encouragement from Mr. Tilden. In an interview with the writer as early as Sept. 13, 1882, he repeated the expression of his purpose to remain in retirement. On the 1st of June, 1883, he reiterated this declaration in an interview with Mr. Manning. His most intimate friends and the public journals which were supposed to have access to the best information invariably bore the same testimony. Mr. Tilden himself frankly expressed this intention to many who conversed with him.

Nevertheless, of twenty-two States which held their Conventions before the publication of Mr. Tilden's letter of declination on the 12th of June, 1884, twenty

and until both Mr. Tilden's public career and his writings should have become more completely the property of history.

That time seems to have arrived. No one has now any pretext for ascribing this publication to narrow personal or partisan motives, nor can any one now suspect Mr. Tilden of entertaining personal ambitions which political station could either satisfy or gratify.

A casual glance at the contents of these volumes will inform the reader that Mr. Tilden is not a literary man in the professional acceptation of that term. He has never written to impress people with the excellence of his writing, nor spoken to impress them with the excellence of his speech. Like Jefferson, like Palmerston, like Cavour, like Bismarck, he has used his pen and his tongue as instruments with which to persuade and convince, rather than to show how persuasively and convincingly he could use them. Though possessing a marvellous faculty for literary expression, he has employed that faculty as a means, but never as an end. Through life he has dealt mainly with living and pressing questions, seldom occupying himself with academic and speculative problems or

either instructed their delegates to vote for his nomination, or by resolution declared him to be their preference, or appointed delegates known to favor his nomination. One of the remaining two, although nominally favoring a State candidate, in the belief that Mr. Tilden would not consent to run, was really favorable to his nomination.

Of fourteen States which held their Conventions after the publication of Mr. Tilden's letter of declination, five States declared either for his nomination notwithstanding his declination, or expressed their continued preference for him, while nine appointed delegates of whom he was their first choice.

New York held its Convention on the 18th of June, six days after his letter of declination was published, and after delegates had been appointed from all the counties unanimously for him. The remaining State of the thirty-eight which compose the Union held its Convention on the 17th of June and appointed delegates favorable to its State candidate.

The letter of declination of the 10th of June was prepared with the intent that it should be issued after the formal declaration by the State Convention of New York in favor of the re-nomination of Mr. Tilden, which was deemed to be a suitable occasion on which he could announce his definitive purpose without indelicacy, and yet in season not to be a surprise to the National Convention. Upon the request of the immediate friends of Mr. Cleveland, it was given to the public at an earlier day, with the idea that thereby an expression in his favor by the State Convention would be facilitated.

"doubtful disputations." Whenever he has taken down his gun from the wall, it has not been for a parade, nor to fire at a mark. If, like Brutus over the dead body of Cæsar, he has asked the public to lend him its ears, it has been for his cause, not for his eloquence, that he wished to be heard. Nor indeed has it been Mr. Tilden's habit to appeal to the public in any way when his end could be as well accomplished without such appeal. He was twice a member of the Legislature of New York, and he was a member of two constitutional conventions; and, though one of the half-dozen conspicuous and influential members of each of those bodies, the record shows that he was one of the most sparing of speeches. It has been habitual with him, as with Franklin, to rely more upon private and friendly conference than upon public discussion for the success of his measures, rightfully assuming that it is easier for an opponent to surrender in private to arguments urged in friendly confidence than in public at the close of an harangue or debate, when surrender inevitably inflicts some of the humiliation and pain of defeat. For the like reason, many of his most thoughtful and most carefully wrought discourses were made in committees and were never reported. He has thus incurred one of the penalties which men of action have usually to pay, in leaving no such record of their achievements as would testify to a corresponding industry and capacity in a man of letters.

While disclaiming on behalf of Mr. Tilden any special pretensions as a man of letters, it would be doing him signal injustice to imply that as great distinctions were not within his reach in the walks of pure literature, if he had chosen to turn his talents in that direction, as have rewarded his exertions as a political leader. No one can run his eyes over the following pages without discerning in them abundant evidence of the rarest literary faculty, abundant evidence of pre-eminent capacities for analysis, statement, illustration, and demonstration. This faculty, these capacities, were as manifest at the dawn of his career as they were at its meridian. To those who have been accustomed to regard Mr. Tilden chiefly as a man of action, this statement may seem rash. I undertake to make

it good by a single citation, from a paper written when he was but twenty-three years of age. It was in reply to the late William Leggett, whose assault upon President Van Buren's Inaugural Address in 1837 provoked Mr. Tilden to enter the lists in defence of the first President which New York had yet furnished the Republic. In it occurs the following characterization of a class of which his impracticable antagonist was a singularly perfect specimen, that is worthy of the pen of La Bruyère or of Vauvenargues. It is the portrait of a type which every one will recognize. But when, or by whom else, has it ever been so well painted?

"I know that there is a class of no-party men who vindicate their claim to that character by doing injustice to all, even without the excuse of bias. I know that society is sometimes troubled with 'I-always-speak-my-mind' nuisances, who seem to think it a virtue to violate the comities of social intercourse, and always to sacrifice the feelings of others to their own caprice or ill-nature. But to be really impartial and independent, a rare assemblage of mental and moral qualities is requisite. First, a power of just reasoning, with especial freedom from rashness in the induction of general principles and a confident reliance on their universal and exact truth; then, a moderation of character which lessens the bias of controversy and saves from false extremes; a freedom from that arrogant pride of personal independence that does not allow of profiting by the opinions of others; and above all, a pervading sense of justice that is cautious to do no wrong. A man who is so unfortunate as to possess the reverse of these qualities is mentally and morally disqualified for genuine impartiality and independence. If he be afflicted with the desire of appearing distinguished for the qualities he most lacks, the disease becomes a mania. He considers it a derogation from his personal character to concede aught to the feelings or opinions of others; forgetting that without such concession there can be no common action for a common object, and that without the capability of such action, a man is fit, not for society, not even for a state of nature, but only for absolute solitude. Absurdly attempting to act with others, he is not satisfied with devoting himself, as he has a right to do, to the maintenance of his peculiar sentiments, but must force those sentiments upon his associates. Even then he cannot content

himself with leading on a change in opinion, the slow progress of which in masses is the sheet-anchor of safety. He will not give others the opportunity of investigation he has previously had. He makes no allowance for deficient means of information, for habitual moderation or constitutional caution. Still less does he tolerate dissent or a qualification of his extremes. All must be convinced wholly, and *instanter*. With eyes closed and throats distended, they must force down his newfangled doctrine, with all its sharp points and its impure crudities, under the penalty of being held up to 'public reprobation and scorn' as false to the common object. If he is in any measure successful, he ascribes to his very faults what is due to truth struggling to light through the impracticability of its advocate. Nor does the folly end here. He is an independent man, forsooth! and he must prove it. He must maintain his individuality among his associates, even to the injury of the common object. Lest he seem partial to his friends, he inflicts outrage upon them. To avoid the appearance of an amiable weakness, he commits actual injustice and treachery. Boasting his freedom from the least excess of a noble and generous sentiment, he is the slave of an exaggerated idea which springs from a pitiful vanity. Friendship has less influence on his opinions and conduct than opposition; the one cannot moderate or restrain him, but the other can drive him to absurd extremes. He is to his friends an enemy, to his enemies a slave. He is independent of authority, and therefore attacks what is authorized, even though it be right. He despises the delicacy which alone renders social life tolerable, and therefore violates the privacy of retirement and lacerates personal character. He is above regarding what mankind esteem most sacred. He assails the revered usages of religion; his vampire-tracks are upon the graves of the dead. All the while he mistakes his own motives; about which, if he had applied the test of common-sense, he could not have been deceived. Impartial justice, when forced to condemn, does not exaggerate the fault. When speaking solely from public motives, and through an organ modulated by personal benevolence, its voice is of forbearing censure, not of angry crimination. Impartial justice does not commit palpable and outrageous wrong. If a little adulterated by human frailty, it does not inflict such wrong on friends whom that weakness would naturally favor. He mistakes also the consequences of his conduct: injustice, or even harshness, in the judge causes an undue sympathy for the guilty

that foils the end of punishment. He mistakes the character in which he acts. He fancies that, as a universal Aristarchus, he rules and rights the world; while he serves it, if at all, as a public flagellater. I have drawn a picture; I leave to the public to say if it be a portrait."

Indeed, so far as the literary faculty can express itself in practical politics, it may be said to have left its impress distinctly upon the character of Mr. Tilden's leadership. He always relied for his influence upon ideas rather than upon patronage or party machinery, while fully comprehending the limited efficacy of both; he studied rather to satisfy universal than individual needs, and to guide his party by general principles than by temporary expedients. Of what is called patronage he can scarcely be said to have ever had any to dispense. He held his ascendency with the Democratic masses of New York at a time when he had to confront the opposition of the executive, of the heads of departments, of the judiciary, of a majority of both branches of the Legislature, and of at least one third of the county leaders. He also held a majority in New York State against at least twenty thousand hostile office-holders. It is true he carried on his politics upon a plane which for a man of inferior abilities would be impracticable, and to most of his own friends seemed impracticable, — a plane upon which he probably would not have ventured himself if he had not been ready at any moment to return to private life. It was his notion of leadership "to hitch his *party* to a star;" and he had little esteem for men pretending to be great political leaders who, while swaying all the patronage of the country, — Federal, State, and local, — failed to hold their own party or a majority of the people.

Should any additional reasons be required for making this publication at the present time, they are at hand. Nearly two generations have been born and clothed with the responsibilities of citizenship since those fundamental principles of constitutional democracy which Jefferson and Madison planted, and which Jackson and Van Buren watered, have ceased to yield their proper increase. The Convention held at Baltimore in 1848 for the nomination of a Presidential candidate for the

support of the Democratic party, presumed to exclude the delegates chosen by the Democracy of New York because the Convention which selected them had declared that, "while faithfully adhering to all the compromises of the Constitution and maintaining inviolate all the reserved rights of the States, they were uncompromisingly opposed to the extension of slavery, by any action of the Federal Government, into any Territory of the United States already free; and that to this end they desired, and so far as their efforts, constitutionally directed, could accomplish it, they designed, that the immunity from slavery contained in the ordinance of 1787, first proposed in 1784 by Thomas Jefferson, should be applied to these Territories, so long as they should remain under the government of Congress."

"The babe that was unborn might rue
The *voting* of that day."

In this rash effort to make the nationalization of slavery one of the tests of democracy, the Democratic party was thrown from its orbit; and the remainder of its official supremacy was spent, less in illustrating sound Democratic principles and in applying them to the new problems of statesmanship as they were developed with the growth of the country, than in a defensive, exhausting, and ineffectual struggle with the vindictive consequences of its folly. Four years before, Mr. Van Buren had been dismissed from public life and proscribed for discountenancing a sectional scheme to make five Slave States out of the newly acquired Territory of Texas. He was now re-nominated for the Presidency by the unrepresented and misrepresented Democracy of New York, who with becoming spirit declined to accept as their candidate the man[1] whom they had been allowed no part in selecting, insisting that no Convention could name candidates entitled to their support in which their delegates were not received on equal terms with the delegates from other States.

With this intolerant proscription of the New York Democracy began the disastrous schism which was destined to rend in twain

[1] Lewis Cass, of Michigan.

both the great parties of the country and practically to annihilate the political organization which had given a wise and beneficent government to the country for half a century. Then too and there were laid the foundations of the political conglomerate which in 1860 acquired, and for twenty-four years retained, uninterrupted control of our Federal Government.

But, though cast down, the Democratic party was not destroyed. Though overtaken and chilled by the winter of popular discontent, though its summer's leafage and autumn fruitage strewed the ground, and barrenness dwelt in its branches, the seeds of its immortal principles were not dead. They slept where they had fallen, quietly awaiting the revolution of the political seasons and the return of the spring which was to warm them again into life. Though their period of hibernation was protracted, and exhausted the faith of many, it was destined in the fulness of time to come to an end. The ways of the New York Democracy in 1848 were to be justified to men, and its honor to be vindicated, although at a great price. The stone which the reckless builders of those days rejected, was again to become the head of the corner.

Just twenty-eight years after the delegate from New York, who had been selected by his colleagues for the purpose, broke to their outraged constituents the story[1] of their State's humiliation, that same delegate received the suffrages of a large majority of his countrymen for the highest honor in their gift; and to-day, through that delegate's influence, another citizen of New York, who was nominated by a Democratic National Convention which imposed no sectional tests, and who was elected without the vote of a single slaveholder, becomes the chief magistrate and most honored citizen of the Republic.

"The wheel is come full circle,"

and the bones of the Democratic party that were broken upon the cross of slavery in 1848, now, after an interval of thirty-six years, are once more knit together, and the traditions and the

[1] See Vol. I., p. 232 *et seq.*

doctrines inherited from the golden age of the Republic are about to resume, not merely their official, but their moral supremacy in the nation.

Unhappily, but a comparatively small proportion of those who compose the Democratic party that elected Mr. Cleveland have read, and still fewer are old enough to have heard, any of the prolonged and fiery debates in which were forged those eternal principles of Democratic polity which for nearly sixty years constituted the grace and strength of American republicanism. Called now for the first time to apply those principles to the emergencies of a community which has doubled its numbers and more than doubled its wealth and resources, the Democracy of America will naturally turn to those fountains of political philosophy which are still most affluent and which have been least corrupted in their flow. That the papers here submitted to the public constitute one of these fountains, few, if any, will now be disposed to question. With Mr. Tilden the problems of government have been his meditation by day and his dream by night from his early youth. Upon those subjects he had the ear of the public before he was out of his teens. The third paper in this collection, written in his nineteenth year, so impressed Washington Irving, who chanced at the time to be the guest of Mr. Van Buren at Kinderhook, that, though having the least possible interest in political matters, he asked that the young writer might be presented to him. From this time forth, the political affairs of his native State and country have been with Mr. Tilden a constant concern, and have engrossed a larger share of his time and attention than he has bestowed upon his private affairs.

Beginning his career as a political leader and publicist while General Jackson was yet President, and when the principles of American republicanism were first comprehensively applied to the great problems of finance and revenue, Mr. Tilden is one of the few surviving statesmen who had the good fortune to receive his early political training in the golden age of the Democratic party, when public measures were thoroughly tested by the Constitution and by public opinion, and when by ample debate the voters of the whole nation

were educated, not only to embrace, but also to comprehend, the principles upon which their government was conducted, — a training to which his subsequent political career bears continual testimony. Whatever heresies of doctrine have crept into our public policy since those days, the responsibility for them will not rest with him. In all the papers and speeches with which from time to time he has endeavored to enlighten his countrymen it will be difficult to find a line or a thought not in harmony with the teachings of the eminent statesmen who during the first fifty years of our national history traced the limits and defined the functions of constitutional democracy in America. From that epoch to this there has been scarcely a question of public concern having its roots in the Constitution which Mr. Tilden has not carefully considered and which is not more or less thoroughly treated in these volumes. He was a champion of the Union and of President Jackson against the Nullifiers and Mr. Calhoun. He denounced the American system of Mr. Clay as unconstitutional, inequitable, and sectional. He vindicated the removal of the Government deposits from the United States Bank by President Jackson, and exploded the sophistical doctrine of its lawyers that the Treasury is not an executive department. He vindicated President Van Buren from the charge made by William Leggett of unbecoming subserviency to the Slaveholding States in his Inaugural Address. He was among the first to insist upon free banking under general laws, thus opening the business equally to all, and abolishing the monopoly which was a nearly universal superstition. He exposed the perils of banking upon public funds. He advocated the divorce of bank and State, and the establishment of a subtreasury. He asserted the supervisory control of the legislature over corporations of its own creation. He exposed the enormities of Mr. Webster's scheme to pledge the public lands for the payment of the debts of the States. He drew and vindicated in a profoundly learned and able report the Act which put an end to the discontents of the New York "Anti-renters." He wrote the protest of the Democracy of New York against making the nationalization of slavery a test of party fealty. He was the first, we believe, to assign states-

manlike reasons for opposing coercive temperance legislation. He pointed out, as no one had done before, the danger of sectionalizing the government. He planned the campaign, he secured the requisite legislation, he bore much the largest share of the expense, and, finally, he led the storming-party which drove Tweed and his predatory associates to prison or into exile. He purified the judiciary of the city and State of New York by procuring the adoption of measures which resulted in the removal of one judge by impeachment and of two judges by resignation. He induced the Democratic Convention of 1874 to declare, in no uncertain tone, for a sound currency, when not a single State Convention of either party had yet ventured to take a stand against the financial delusions begotten of the war, which for years had been sapping the credit of the country. It was at his instance that the Democratic party of New York, in the same Convention, pronounced against third-term Presidents, and effectively strengthened the exposed intrenchments which the country, for eighty years and more, had been erecting against the insidious encroachments of dynasticism. During his career as governor Mr. Tilden applied the principles of the political school in which he had been educated to the new questions which time, civil war, and national affluence had made paramount. He overthrew the Canal Ring which had become ascendant in all the departments of the State Government. He dispersed the lobby which infested the legislative bodies. He introduced a practical reform in the civil service of this State, and elevated the standard of official morality. In his messages he exposed the weakness and inadequacy of the financial policy of the party in power, the mismanagement of our canal system, the Federal assaults upon State sovereignty, and the pressing need of radical reforms both in the State and Federal administration.

Such, in general, is the character of the topics treated in these volumes; and they are treated, not in a superficial and perfunctory way, but as a statesman, in the largest sense of that term, should treat them. Mr. Tilden has seldom discussed any matter of public concern without planting the

structure of his argument upon the solid ground of fundamental principles. Always cautious in the selection of his facts, logical as the seasons, singularly moderate in his statements and temperate in his language, he, better than, perhaps, any other statesman of our time, can afford to be judged by his record. Who that has figured so prominently in public affairs has said or written less that he would prefer not to have said; less that his maturer judgment cannot approve; less that will not commend itself to the deliberate judgment of thoughtful men and to an unprejudiced posterity?

It is with extreme regret that I find myself constrained to put these volumes to press without including in them any adequate memorial of Mr. Tilden's strictly professional career. It is no disparagement to the American Bar to say that among its greatest achievements must be included Mr. Tilden's part in the proceedings instituted by Giles *vs.* Flagg to defeat Mr. Flagg's title to the office of comptroller of New York city in 1855; his successful resistance to the claim of Mrs. Cunningham to be declared the widow and heir of the murdered Dr. Burdell; his defence of the Pennsylvania Coal Company *ads.* The Delaware and Hudson Canal Company; and his original and successful application of the doctrine of trusts to the officers of corporations in the case of The Cumberland Coal and Iron Company *vs.* Sherman et al. Mr. Tilden's triumphs in these several cases would alone suffice to place him among the foremost lawyers of his own or of any age. Unhappily the reports of all these cases are either too imperfect to do any justice to the counsel concerned in them, or they turn upon such technical mysteries as would scarcely be intelligible except to the professional reader. They must live, therefore, while they live, like a goodly share of the most surprising displays of forensic genius, in the necessarily imperfect records of the biographer.

I may not close these prefatory observations without an expression of my obligations to Mr. Tilden for some of the papers in these volumes, now very rare, which appeared in the days of his comparative obscurity as a publicist; and also

for the privilege he has kindly accorded me of associating my name with a publication upon which his name confers whatever value and importance the public shall concede to it. I also owe my grateful acknowledgments to Mr. Manton Marble for several of the papers in this volume which it would be difficult, and perhaps impossible, to duplicate.

NEW YORK, July 6, 1885.

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WRITINGS AND SPEECHES

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SAMUEL J. TILDEN.

I.

THE Tariff Acts of 1828 and 1832 were thought by many of the statesmen of what are known as "the Southern States" to discriminate unfairly against the agricultural interests of their section of the Commonwealth, and in favor of the infant manufacturing interests of the Eastern States. Failing to obtain what they regarded as adequate relief for their grievances from the Federal Government, they put forward "the reserved right" of each State, as an independent party to the original compact of the States, to disregard any legislation of the Federal Government, — to "nullify" it, in other words, — whenever they were persuaded that such legislation was in conflict with their view of the conditions upon which the Union was formed. Acting upon this theory, the State of South Carolina, in the summer of 1832, assumed an attitude of defiance toward the Federal Government, and, under the leadership of John C. Calhoun, — then the most conspicuous, and perhaps the most influential, statesman in the Southern States, — deliberately proclaimed that the Federal revenue laws should not be enforced within her borders. On the 11th of December President Jackson — who had just been triumphantly re-elected — issued his memorable Proclamation warning the people of South Carolina and their sympathizers of the perils of their attitude toward the General Government, and giving them to understand that the Union would be preserved and the Federal authority enforced, at whatever hazard. On the 16th of January, 1833, he sent to Congress what is known to history as his Nullification Message; which was followed immediately by the introduction into Congress of a "Force Bill," intended to secure the prompt collection of the revenue

in the State of South Carolina, which passed the Senate by the decisive vote of 32 to 8.

Pending these events, a new tariff bill was prepared by Henry Clay, known as the "Compromise Act," under the cover of which the Nullifiers finally retreated and found shelter from their rash and critical position. The two articles which follow were contributed by Mr. Tilden to the Press of his native county while these were the burning questions of the day, and when for a time the perpetuity of the Union was by many despaired of. The fact that Mr. Van Buren — who was already regarded as the probable successor of President Jackson, and whose political fortunes were involved in the issue of this contest — was also a resident of Columbia County, gave local importance to the discussion. It is worth noting, that, when these articles were written, Mr. Tilden was not yet twenty years of age.

NULLIFICATION AND THE OPPOSITION.[1]

Upon the re-election of the President by an overwhelming, and to them unexpected, majority, the opposition Press were profuse in their professions of candor toward his administration, and their promises to yield a hearty support to such of its measures as might meet their approval. How have their pledges been redeemed? When the Proclamation of the President was issued, declaring his determination to maintain the supremacy of the Constitution and laws, and to preserve the Union, — objects which they could not but approve, — instead of giving him their cordial support, they immediately attribute the act itself to the basest of motives. The patriotic eloquence of that noble document, its powerful reasoning, its surpassing beauty, extort their admiration; yet, issued as it was by one whose whole life, they must acknowledge, has been devoted to his country's good, they ascribe it to his enmity toward Mr. Calhoun. And in thus pertinaciously attributing an act acknowledged to be good to the very worst of motives, they disclose the rule of that warfare which they have so relentlessly waged against the President. But the consequences of this course do not end with him. The object of the Proclamation was to array a moral force in support of the Government; to call out an expression of public feeling, which should rebuke disaffection and sustain the laws, by an influence more powerful than military force. The tendency of the course of the opposition Press is wholly to destroy this moral influence. If they could succeed in producing the impression that the object

[1] From the Kinderhook Sentinel, 1833.

and end of the Proclamation was to injure Mr. Calhoun, it would palsy the arm of every friend of his country which is now raised to sustain the Executive in the noble attitude he has assumed; it would cause a moral revulsion in the public mind which would embarrass instead of aiding the Government, for the people would not lend themselves to minister to the gratification of private resentment; it would destroy the salutary influence of the Proclamation upon the minds of the mass of honest but deluded men who have lent their support to Nullification; it would embitter their minds, and strengthen and fix them in their fatal course. Such is the candor which the opposition Press extend toward the President, such the support they render him: a candor which denies good motives to the best actions; a support which takes the way, above all others, most calculated to defeat his object! Would to Heaven that its palpable and abominable injustice to one who has deserved so well of his countrymen were the worst feature of this conduct, and that in these reckless attempts to injure him they did not vitally wound their country!

In their anxiety to fix the charge of inconsistency upon the President, the opposition accuse him of permitting Georgia to trample with impunity upon the Constitution and laws at the very time he is preparing to enforce them in South Carolina. The reckless editor[1] of the New York "Commercial Advertiser," in the same paper which contains the Proclamation, affects to consider the controversy between South Carolina and the Union as a personal contest between the President and Mr. Calhoun, in which he "sees no reason for the friends of the Constitution to interfere!" If the President should not execute the laws, this consistent and moral editor would pronounce him worthy of impeachment for gross dereliction of duty; if he should attempt to execute them, the editor would not sustain him because he had not done so in a former instance, and because in recommending a modification of the tariff, he had assumed the ground of the Nullifiers! Though few of the opposition

[1] Colonel William L. Stone.

presses have gone this length, they have perseveringly mingled these charges with every expression of approbation of the President's course with respect to South Carolina; they have repeatedly attributed the nullification of that State to his countenance of it in Georgia; and in many instances have declared that he must execute the laws in Georgia before he could receive their support in executing them in South Carolina. Now, if this charge were true, would it be politic to add to the already existing difficulties another, — a controversy with a more powerful and united State; would it be best to force that State to the aid of South Carolina? Or is the desire of these "friends of the Constitution" to embroil the President with Georgia so great, that they care not if in doing it they strengthen disaffection, and perhaps sever the bonds of the Union?

But the charge itself is as false and slanderous as they are reckless and malicious who could select this moment to utter it. As a fair specimen of the manner in which it has been urged, and of the attempts which have been made by means of it to enlist the sympathies of the religious public in behalf of the opposition, we extract the following from a letter of Ex-governor Shultz, of Pennsylvania, which was published in most of the opposition papers, and without correcting the calumnious falsehood which it contains: "The ministers of the meek and lowly Redeemer are left to languish in a dungeon, because President Jackson has not carried into effect the decision of the Supreme Court." Driven from this ground of attack, forced to acknowledge that the President had no right to interfere until after the further action of the Supreme Court, they next make a stand under the Intercourse Law of 1802. This Act, — which regulates intercourse with the Indians, forbids attempts to survey their lands, provides for the punishment of trespasses and such other offences as may be committed within their territories, and for their general protection, — it is alleged the President has neglected to execute, in direct violation of the Constitution, which enjoins upon him

the duty of the faithful execution of the laws. A moment's examination will show that this charge is utterly without foundation. The nineteenth section of the Act declares "that nothing in this Act shall be so construed as to prevent any trade or intercourse with Indians living on lands surrounded by citizens of the United States, *and being within the ordinary jurisdiction of any of the individual States.*" That this Act was prospective in its operation, and would apply to those tribes which should thereafter become subject to the jurisdiction of a State, as well as to those which were so at the time of its passage, will hardly be disputed. After a deliberate examination of the subject, it was the opinion of the President that, upon the extension of the laws of Georgia over the Cherokees, the case was fairly embraced within the exception. Now, however erroneous this construction of the law may have been, the right of the Executive to make it is unquestionable. When called upon to execute this Act, he must, of necessity, first determine whether the tribe, in whose behalf its application is claimed, be within the jurisdiction of a State; and if he decide incorrectly, he may be accused, not of having transcended his powers, but of having erred in their exercise. And if his construction of the law should be so extravagant as to defeat its object, it would even then be but the abuse of a power clearly possessed. But if the charge of having passed the bounds of his constitutional duty be without foundation in truth, that of having given the Act an extravagant construction is no less so. When it first became necessary for the President to act upon this subject there had been no judicial decision upon the question, and his immediate predecessors in the administration had, just before, officially promulgated opinions fully coinciding with those he had adopted and by which his course in respect to this Act has been guided. But there is yet much higher authority. The legislative department, which had enacted the law, which could abrogate it, and which, if they did not approve the President's construction, could pass an Explanatory Act correcting it, upon a full discussion of the subject approved and sanc-

tioned his construction of the law. The ability of this department of the government to conform the law itself to their wishes should certainly give great weight to their construction of it; and the President would have incurred a high responsibility had he, in so important a question, acted upon a different one. The construction given by the Secretary of the Treasury to a section of the tariff law of last year caused it to bear heavily upon the mercantile interests: yet, though the correctness of his opinion was doubted, he was not accused of having transcended his powers in forming and acting upon that opinion; he was not accused of having assumed a "dispensing power" over the laws. But an application was made to Congress to alter the law so as to obviate the unfavorable construction. Now had Congress, after a deliberate examination of the matter, refused to alter the Act, and sanctioned the construction of the Secretary of the Treasury, he would have been exonerated from the imputation even of error in judgment, since he would have fulfilled the intentions of those who made the law, and who could repeal it.

II.

THE CLAY COMPROMISE OF 1833 AND NULLIFICATION.[1]

HOWEVER advantageous for the country Mr. Clay's Bill may be in itself, and however cogent the reasons which he urged in its support, his abandonment of the ground he formerly occupied must be admitted. How long is it since, in a public speech, he pronounced the Union, without the protective system, not worth preserving, and declared his determination to adhere to the one, even at the hazard of a dissolution of the other? Until the introduction of his Bill, the whole weight of the arguments of his friends, the universal expression of their opinions in public meetings, and their uniform course in Congress, were in opposition to any modification of the tariff at the last session. More than this; when the friends of the Administration had the moral courage to call upon the North to yield something of interest to patriotism, their motives were most violently assailed, they were branded as "submission men," as "dough-faces," and were charged with being willing to barter away the essential interests of the nation to secure the aid of the South in elevating Mr. Van Buren to the Presidency. Yet when Mr. Clay introduces a Bill involving all the obnoxious principles of the Administration upon this subject, he is immediately hailed by many of the same presses and the same individuals as the savior of his country!

Whence this change in the course of Mr. Clay? Was it from a lofty spirit of patriotism? or was it the baser suggestion of mingled interest and disappointment? Why was this spirit of

[1] From the Columbia Sentinel, April 11, 1833.

patriotic concession never evinced as long as the pursuit of the course which had brought these evils upon us could subserve his interests? When, last year, many of the firmest friends of the tariff were advocating a compromise of the question, under the belief that such a measure alone could save us from the horrors of disunion, where was Mr. Clay then found? When the committee of the Senate receded from some amendments, unimportant in themselves, and an adherence to which would have inevitably defeated the Bill, who does not recollect his gross and indecorous attacks upon the members of that committee? Has the Union become more valuable now that it is no longer Mr. Clay's interest to pursue a course that had well nigh destroyed it? Is the tariff less essential to the interests of the country now that his boisterous support of it cannot longer be made the means of elevating him to power and to place? Mr. Clay has been the head and front of one of those parties which produced these unhappy divisions. At the late election his claims to the first office in the nation were mainly urged upon the ground of his identification with that party; and upon this ground rested his hopes of success. He did not *then* assume the attitude of a mediator. It was not till the people had decided, by an overwhelming majority, against his ultra and uncompromising course, that a zeal for peace came over him, which has led him to sacrifice his own offspring upon the altar of Union! It was not till, by his own admission, a harmonious adjustment of the question could not much longer be prevented, that he put on the garb of a peacemaker. When an alliance with the American System had ceased to be profitable, when it could no longer be made a stalking-horse to ride into power upon, he was ready to abandon it. Then visions of "family strife," of "smoking ruins," and of "desolated fields" floated through his imagination. Then he found that the Union was more valuable than the tariff itself. A new-born zeal for peace and harmony fired his soul. He could not "look silently on the raging storm." He could not "listen to the soft and seducing whispers of ambition." He was willing to risk the

"alienation of faithful and valued friends." He whose whole life had been a struggle for office now felt no desire "even for the highest!" When his repeated and desperate attempts to obtain the grapes had failed, like Reynard of old he consoled himself with the reflection that they were sour! When the voice of the people had placed him at an immeasurable distance from the Presidential chair, he could look upon that high station with the most philosophic contempt, and even pity its "incarcerated incumbent" as one deprived of "all blessings of genuine freedom!"

Mr. Calhoun and Mr. Clay, they tell us, have saved the Union. Saved the Union from what? From themselves! I defy their friends to escape from this conclusion; for what was it that endangered the Union but the conflict of those warring systems of which they were the ultra supporters, the champions and fathers? And at what time did they interpose for its preservation? Mr. Calhoun when those States from which he expected aid and co-operation had denounced his principles, when his cause was utterly hopeless, and when all the ingenuity which had been employed in weaving the web of Nullification was required to extricate himself from its meshes. Mr. Clay, as he tells us, when a compromise of the question would have been speedily effected by other hands, and when he feared that his favorite system would be more suddenly, if not more fatally, prostrated. And they claim to have saved the country! Their modesty is equalled only by that of the assassin who, when he perceives he cannot effect his purpose, drops the hand raised to strike the dagger to your heart, and claims your eternal gratitude for having preserved your life.

At the late election the Administration were before the people as the advocates of a mutual sacrifice of interest to the public good, of a compromise which should reconcile conflicting interests and restore peace to the country. In taking this position they arrayed against themselves the extremes of both parties; but they chose to pursue the common good of the whole country rather than rest their hopes of success upon appeals to

sectional and individual interests. And nobly did the people justify this confidence in their firmness and integrity of purpose. In every point of view the result was an unmixed triumph of the Administration. If Mr. Clay's former course upon this subject resulted from a disregard of its consequences, how strikingly do his attempts to avail himself of sectional prejudices at the expense of the prosperity of the country contrast with their enlarged and comprehensive and patriotic policy! If his course resulted from his not foreseeing these consequences, what an exhibition does it afford of the superiority of the Administration in sagacity and statesmanship!

III.

In 1829, at the request of President Jackson, Martin Van Buren resigned the governorship of the State of New York to accept the office of Secretary of State. To relieve the President, in 1831, from an embarrassment growing out of a difference between him and some of the partisans of John C. Calhoun in his Cabinet in regard to the treatment due from their respective families to the wife of General Eaton, who was then Secretary at War, Mr. Van Buren resigned his seat in the Cabinet. This facilitated, as it was intended to do, the formation of an entirely new Cabinet. Mr. Calhoun resented this step; and from its date ceased to hold any personal relations with President Jackson or with Mr. Van Buren, who, very unjustly, was held responsible for the Cabinet rupture. The alienation even went so far that at a public dinner given to Mr. Calhoun in South Carolina shortly after these occurrences, the ordinary toast to the President was omitted, and the first toast that was drunk reflected offensively upon the character of Mr. Van Buren.

As soon as the new Administration was organized, President Jackson nominated Mr. Van Buren as Minister to England. Presuming upon his confirmation, the new Minister repaired to London, presented his credentials, and proceeded to organize his official establishment near the English Court. He had failed to appreciate the ambition or the desperation of his rivals. When Congress met in the fall, the Nullifiers, under the lead of Mr. Calhoun, combining with the Whigs and Protectionists, under Mr. Clay, made common cause against this formidable candidate for the succession, and refused to confirm Mr. Van Buren's nomination. The Democracy of New York

resented this factious and ignoble conspiracy to humiliate their most prominent and promising statesman; and one of the consequences was that Mr. Van Buren was placed on the Presidential ticket, and elected Vice-President, with Jackson for President, the following year. His success made him the inevitable candidate of the Democracy of New York in 1836, and as a matter of course drew upon him, rather than upon the President, the hostile fire of all the rival candidates, and of all the foes, from whatever cause, of the Administration. It also rallied his friends; and the following article from the pen of Mr. Tilden was a timely contribution to his defence.

VAN BUREN AND THE NULLIFIERS.[1]

FEW men have been more violently or unremittingly assailed than Mr. Van Buren; still more limited is the number of those who have proved as invulnerable to attack. For a long time a prominent actor in the busy scenes of political life, the ingenuity of his opponents, incited by interest and sharpened by malice, has succeeded in fixing upon him not one act disreputable to his character as a patriot or as a man.

Among the vague and indefinite allegations which are made against him, we find only one that is in any degree tangible. The charge to which we refer is that of an improper concealment of his opinions and an habitual avoidance of responsibility. On what occasion has he exhibited these characteristics? Was it when, entering upon the stage of action, unsustained by the influence of family connections or of patronage, he arrayed himself with the Democracy of his native county against the hopeless rule of Federal domination? Was it when, disregarding alike the seductions of ambition and the menaces of power, which were alternately employed to corrupt or to intimidate him, he pursued a course which, for a time at least, must shut him out from every hope of advancement, and condemn him to waste his energies in the struggles of a desperate minority? Was it when, in the hour of peril and of danger, the failure of New York to sustain the National Government would have been followed by the most disastrous consequences, his exertions invigorated her arm and gave confidence to her counsels? Was it when, in the Presidential contest of 1824, he preferred defeat in support of the Republican usages and candidates

[1] From the Columbia Sentinel, Sept. 12, 1833.

to success in a different course? Was it when the Federal Government, sustained by large majorities in every branch and by most of the prominent politicians of the country, was fast whelming the rights of the States and the people in the vortex of constructive power, he remained firm amid the general apostasy? Was it when the last moments of the great Father of Democracy were embittered by the fear that he had survived the principles and the cause to which his life had been devoted, and the exertions of Mr. Van Buren to restore the ancient landmarks of the party, and to revive, establish, and defend its primitive doctrines, called forth his grateful plaudits and gave him hope that posterity would not be cheated of the promised fruits of his toils and his sacrifices? Was it when, in support of the same great principles, he advised, approved, and sustained the vetos of the President, — at a time, too, when his own prospects were indissolubly bound up in the result of an election which these very acts must jeopard? In which of these instances has he manifested weakness of purpose, evasion, or concealment? And if these and many other acts of his life have been marked with a steady and fearless pursuit of the path of duty and an utter disregard of personal consequences, when and where has he exhibited the contrary qualities? When has he avoided a public question? When has he shrunk from incurring a just responsibility? Always firm, but never violent, Mr. Van Buren has fearlessly met every public question; and if his enemies cannot find as many inconsistencies in his course as in their own, it is not because he possesses the magic power of reconciling contradictions, or the more than magic power of so expressing his opinions that they will bear a construction suited to every exigency. The cause is far more simple. Never hurried by momentary excitement into inconsiderate and extravagant generalizations for temporary purposes, — he has rarely, if ever, taken ground which it afterward became necessary to abandon. Principles are eternal and unchanging. He who acts from the deliberate convictions of a mature judgment will seldom have occasion to alter his

opinions. But he who adopts comprehensive principles or extravagant doctrines to suit temporary expedients or from a transient enthusiasm, must change with every fluctuation of circumstances and with every caprice of passion.

Mr. Van Buren's sentiments upon every important subject on which a proper occasion for their expression has offered, are before the public. They only are ignorant of them who have neglected to inform themselves. Shortly previous to the late election he was called upon, by a meeting in North Carolina, to declare his opinions upon the great questions which at that time agitated the country. His fortunes embarked in a contest on the issue of which his very political existence depended, — his opinions asked with the evident design of embroiling him with some party or other, and of wresting to his destruction whatever declaration of them he might make, — he could have had no more powerful inducement or better excuse for pursuing that "non-committal" course which his enemies attribute to him. Yet he neither hesitated nor evaded, but returned a full and explicit enunciation of his sentiments. His reply, upon a recent occasion, to similar inquiries proposed to him by his fellow-citizens of Rhode Island, was no less frank and satisfactory. Mr. Webster, — the soul of frankness itself, — whose opinions were also requested, returned no answer; and Mr. Adams — ever in his most candid moments relapsing into habits inherited from the great Italian master of his school — answered in a manner altogether too diplomatic to mean anything. And yet there are those to whose perverted vision, in the one case, all is shuffling, dark, and ambiguous, and in the other, all is direct, open, and candid!

The charge of intrigue also rests upon mere assertion; and the most industrious malevolence has sought in vain for evidence of its truth. The instances in which it has been most pertinaciously urged, and the only ones in which proof has ever been attempted, are the rupture between the President and Mr. Calhoun, and the dissolution of the late Cabinet. Independent of the utter inability of the accusers to adduce one

particle of testimony, — independent of the decisive verdict passed by the people, after a full investigation, — there is one fact which ought to put the matter forever at rest. Andrew Jackson, who alone could know, and who could not be deceived, — who, of whatever else he may have been accused, has never been charged with duplicity, — Andrew Jackson has, in the face of the nation, solemnly declared that in neither of these occurrences had Mr. Van Buren any participation whatever.

When the friends of Mr. Van Buren demand proof of the various charges which are brought against him, the only reply they receive is that he is a wily magician, too versatile and too cunning to express an opinion or commit an act which is tangible. Heretofore innocence has been presumed until guilt was proved. Heretofore the burden of evidence has been supposed to rest with the accuser. But the enemies of Mr. Van Buren, unable to convict him in accordance with these universally admitted axioms, in their zeal to accomplish that object hesitate not to reverse them. They have arraigned him at the bar of public opinion for offences of the worst character. The reason they assign for offering no direct proof admits, in substance, that they cannot do so, and in substance asserts the monstrous claim that because they cannot, their allegations shall be believed without it!

But this is one of those unusual cases in which we may safely undertake to prove a negative. The melancholy fate of many a noble mind has taught the world that the loftiest powers and the most profound intellect, unsustained by high moral sentiments, offer but a feeble resistance to the temptations of vice. Nature seems to have ordained, for the security of mankind, that every perversion of the heart shall be followed by a corresponding obliquity of the understanding. However strong may be the speculative belief that "honesty is the best policy," without strict integrity of purpose no man will act, for any considerable time, upon that conviction. There will always be some nearer way to the goal of his desires, and if unrestrained by principle, he will not hesitate

to tread it. That men may, in some instances, commit good actions from mercenary motives, is very possible. But that any one will pursue a long course of virtue from such inducements, is contradicted by the unvarying testimony of all human experience. That Mr. Van Buren, or that any man acting from other than the purest intentions, could have passed a whole life in the mazes of politics, — that he could have been exposed to all the allurements of ambition and the corruptions of power, — and yet no perfidious friend or malignant enemy be able to fix upon him one act of dishonor, is incredible, and too absurd to find belief, except with those who, in order to destroy an obnoxious individual, are ready to reverse the laws of evidence and to violate every rule which should govern men in the investigation of truth.

The causes of Mr. Van Buren's success are obvious and simple. Never rash or extravagant either in action or in opinion; guided more by the influence of judgment than the impulse of passion; sagacious in foreseeing the effects, and prudent in the adoption of measures, — he has avoided the errors into which most politicians have fallen. With happy conversational powers, an insinuating address, and an amiable disposition, he never fails to gain the affection and confidence of all with whom he has intercourse. Combining with these qualities great talent, untiring perseverance, and an intuitive and unequalled knowledge of character, he possesses in a remarkable degree the ability to concentrate and wield the energies of men. One thing more is necessary to account for his extraordinary success and his imperviousness to every assault. It is the force of public and private virtue. There is a magic in the direct pursuit of a virtuous course which the vicious cannot understand; they do not feel its influence, they cannot comprehend its power. In every age the most important and glorious results of virtue and of talent have been attributed to the arts of intrigue or the aid of magic.

IV.

FINDING that Congress had disregarded the warning he had given, — that the national funds were unsafe in the custody of the United States Bank, — President Jackson finally decided to take upon himself the responsibility of having them removed. On the 18th of September, 1833, he read to his Cabinet a paper setting forth his reasons, which were deemed conclusive by a majority of them, for the course he proposed to pursue. Mr. Duane, the Secretary of the Treasury, refused, however, to execute the wishes of the President. He was at once removed; the late Chief Justice Roger B. Taney, of Maryland, then Attorney-General, was put in his place, and the wishes of the President were carried out. The friends of the bank, who were fighting the President at every step, disputed his power to remove the Secretary of the Treasury, on the ground that the Treasury was not an "executive department," and that its head, therefore, was not liable to summary removal. It was in answer to this doctrine — which found eminent, if not disinterested advocates at the Bar and in the forum — that the following argument was prepared and published.

IS THE TREASURY AN EXECUTIVE DEPARTMENT?[1]

MR. CLAY says: "Neither is the Treasury an executive department; it was expressly created not to be an executive department."

And Mr. Binney, "that the Treasury department is not an executive department in the constitutional sense."

Such is substantially the doctrine of those who condemn the removal of the late Secretary of the Treasury. The arguments by which this opinion is supported are, — first, that the word "executive" is not applied to the Treasury department in the title of the Act establishing it, as it is applied to the other departments in the titles of the Acts establishing them; and secondly, that while the duties imposed upon the other departments are defined by the Acts creating them, such "as the President of the United States shall assign to such departments," and are to be performed "as he shall order and direct," those of the Treasury are specific and definite, and are without the provision that they shall be performed according to the direction of the President.

The Act establishing the Treasury recognizes no two characters in the officer it creates or in the duties he is to perform; and the argument as to the nature of those duties drawn from the phraseology of that Act applies, therefore, not to a part, but to the whole of those duties. The omission of the word "executive" in the title of the department would not prove the department partly executive and partly not; nor would the omission of the provision that its duties shall be performed

[1] From the New York Standard and Statesman, Feb. 14, 1834.

according to the direction of the President, prove that a part of those duties shall be so performed and a part otherwise. The argument, if sound, proves too much. It proves that the Act establishing the Treasury department has made the department in no case executive, and its officers in none of their duties subject to the direction of the President, — a position utterly irreconcilable with universal practice, with acknowledged fact, and with the express admissions of those who use the argument.

The premises also on which this argument is founded are false. It is not a fact that these differences exist between this Act and all the Acts constituting the other departments. On the contrary, that creating the Post Office department, the executive character of which is unquestioned, possesses all the peculiar features of this Act.

Nor, if the premises of the argument were true, are the deductions from them legitimate. They assume that the differences between the Acts could only have arisen from a design to make the Treasury and its officers entirely independent of the President; whereas these differences may be accounted for on a contrary hypothesis. It is obvious that a law may be so constructed as to make the manner of its execution discretionary, or to make it strictly administrative. Congress may so frame its laws relative to matters confided to it by the Constitution as to allow to the officer who executes them as much or as little discretion as it chooses; but it cannot frame its laws, relative to matters confided by the Constitution to the President, so as directly or indirectly to limit or abridge his discretion in regard to those matters. It may make a law for the collection or appropriation of the public moneys, for instance, so specific as to admit of no discretion; but it cannot so shape an Act establishing a State department as to impair the executive discretion in the negotiation of treaties or the appointment of the Secretary. The duties of none of the departments are exclusively of either of these two classes. Most of those of the State, War, and Navy departments relate

to matters committed by the Constitution to the President. The laws establishing these departments, therefore, merely describe, in general terms, the respective duties of each, leaving to the President to determine both their extent and the manner of their performance. Most of the duties of the Treasury department relate to matters intrusted to Congress; and, from their nature, there would be much greater danger and impolicy in making them discretionary than those of the other departments. The structure of this department, therefore, contemplates that the laws to be executed by it will be so specific as to allow as little discretion as possible in their execution. This distinction in the nature of the laws to be executed is very important, and is no less so whether the officer who is to execute them be supreme or subordinate; it affects equally the President and the humblest officer. But this distinction in the nature of the laws to be executed, cannot impair the right or the obligation of a superior to see that the laws themselves are executed. The Constitution expressly enjoins upon the President to "take care that the laws be faithfully executed." Whether this provision be considered as extending the powers of the President, or as merely declaring the result of them, no one can doubt his obligation to exercise for this object what powers he does possess, and that if he should permit an officer whom he can remove, to violate the laws with impunity, he would disregard the imperative injunction of the Constitution. If the law were distinct and specific in its requirements, his obligation to exercise his powers would be the greater, inasmuch as the infraction of such a law could be more clearly ascertained, and would be more highly criminal. It will be recollected that the argument in favor of the independence of the Secretary of the Treasury proceeds upon the assumption that the differences in the Acts for establishing the several departments could only have arisen from a design to make him entirely independent of the President. We have endeavored to show that they may be explained without impairing the supervisory right of the President over that department and

its officers. Whether this explanation be the true one or not, the bare possibility that it may be so is fatal to the argument in favor of the Secretary's independence.

So much for the arguments against the executive character of the Treasury department. We will now advert to the facts and evidence which would lead us to a contrary conclusion.

I. The right of the President to remove the Secretary of the Treasury is not questioned; it is expressly recognized by the Act establishing the Treasury department. We may then safely rest the supervisory right of the President upon the ground that *the right of supervision and direction is of necessity included in and coextensive with that of removal.* That these rights are inseparable is almost too clear for argument. How can the right of removal be justly exercised without that of supervision and direction? Was it intended that the President should displace an officer without inquiring into the facts which alone could call for or justify such displacement? Was it intended that he should remove an officer to prevent him from, or to punish him for, doing an act which the President had no right to direct him not to do? And, on the other hand, was it designed to bestow the right of direction without any means of enforcing it? Either of these powers alone is impotent and useless; united, they are efficient and harmonious. In their union, power and right are joined; to separate them, and vest them in different departments, as Mr. Binney supposes them to be vested in the case of the Secretary of the Treasury, would be to make an officer irresponsible to an authority which can displace him at pleasure, and responsible to one which cannot displace him at all, — to give to one department the right of requiring a conformity to its will without the power of enforcing it, and to the other the power of enforcing that conformity without the right of requiring it. The very case in question strikingly illustrates the practical operation of this novel theory. Under this arrangement of powers and rights, if a Secretary of the Treasury should squander the public money by millions, the President could not

remove him, because that officer is not accountable to him. Congress, to whom he is accountable, could not, because it does not possess the power of removal at all. So, between the two, the unfaithful officer would elude the only substantial and efficient responsibility which the Constitution provides. Mr. Binney quotes the case of marshals as an exception to the union of the rights of supervision and removal. But is it not the duty of the President to enforce the law subjecting them to the direction of the courts?

II. *It was the intention of the framers of the Treasury department to make it an executive department, and, like the other departments, subject to the supervision of the President.*

1. The department was organized under a resolution proposed by Mr. Madison in these words: "Resolved, That it is the opinion of this committee that there ought to be established the following executive departments; to wit, — a department of foreign affairs, at the head of which shall be an officer to be called secretary to the United States for the department of foreign affairs, removable by the President; a department of the treasury, at the head of which shall be an officer to be called secretary to the United States for the treasury department, removable by the President; a war department, at the head of which shall be an officer to be called secretary to the United States for the war department, removable by the President." The resolution was adopted, and a committee of eleven appointed "to prepare and bring in a bill or bills pursuant thereto." This resolution is important, — first, as expressing the deliberate opinion of Congress that the Treasury ought to be an executive department; and secondly, as forming the instructions under which the committee which framed the Acts establishing the several departments acted. The difference in the phraseology of these Acts from which it is argued that the Treasury is not an executive department, and that the others are executive departments, existed in the bills as originally reported by a committee instructed to make *all* the departments alike executive. Can it be supposed that they disregarded

their express instructions? or, if they had done so, that in none of the succeeding discussions there would have been the least intimation of the fact?

2. When the Bill to establish the State department was before the House of Representatives, a long debate arose upon that part of it which made the secretary removable by the President. The clause was finally stricken out as appearing to confer upon the President a power which he derived from the Constitution, and a recognition of the power inserted in its stead. In that discussion it was admitted by all that the power of removal involved that of supervision and control; and upon this assumption all the arguments respecting it proceeded.

"Mr. GERRY denied the right of the President to remove, because it would 'make the officers the mere creatures of the President; his power would be sovereign over them.'

"Mr. LIVERMORE: 'If it can be said that the heads of the departments are the servants of the President alone, we shall make the executive department a dangerous one.'

"Mr. MADISON defended the right on the ground that 'it is evidently the intention of the Constitution that the first magistrate should be responsible for the executive department; so far, therefore, as we do not make the officers who are to aid him responsible to him, he is not responsible to the country. . . . I conceive that if any power whatever is in its nature executive, it is the power of appointing, overseeing, and controlling those who execute the laws.'

"Mr. AMES: 'Because the executive powers are delegated to the President with a view to have a responsible officer to superintend, control, and check the officers necessarily employed in administering the laws. . . . But in order that he may be responsible to his country, he must have a choice in selecting his assistants, a control over them, with power to remove them,' etc.

"Mr. LAWRENCE: 'Because in the Constitution the heads of the departments are considered as the mere assistants of the President in the performance of his executive duties. He has the superintendence, the control and inspection of their conduct.'"

Throughout the discussion the right of supervision and control was universally acknowledged to be a necessary incident to that of removal. No one individual advanced a con-

trary doctrine. In fact the arguments of both parties were based upon this assumption. The right of the President to remove was contested on the ground that it would give a control which the Constitution never intended to vest him with. It was defended on the ground that, by the Constitution, he did and ought to possess this control.

It is an obvious consequence of the positions assumed by both parties that the right of supervision and control is coextensive with that of removal. The principle adopted applies not only to the individual officer whose case gave rise to the discussion, but to all officers who hold their places by the same tenure. This was distinctly admitted at the time; and the provisions of the other bills corresponding to the provision upon which the debate arose, were not questioned. The Act establishing the Treasury department recognizes the power of the President to remove its head, and of course all the rights which are consequent upon that power.

3. Not only did the general principle adopted involve the right of the President to oversee and control the Secretary of the Treasury, but its application to that officer was distinctly and universally admitted.

"Mr. GERRY said: 'Among the rest, I presume he [the President] is to have the unlimited control of the officers of the Treasury. I think, if this is the case, you may as well give him at once the appropriation of the revenue,' etc.

"Mr. JACKSON: 'Gentlemen tell us that a power of this kind is necessary to prevent a misapplication of the public money; and to make the officers completely controllable by the President would be the best security. . . . I repeat it again, but two things are necessary to make a man a despot, — the purse and the sword,' etc.

"Mr. SCOTT replied: 'I say, sir, our money may be in the Treasury by millions, and without special appropriations by the legislature the President cannot touch a farthing of it unless he steals it. This being the case, I see as little security to the Treasury in the independence of this officer as danger arising from his dependence, without a single exception; for if the President, with a strong army at his back, comes violently to lay hold of the money

chest, this officer stands but a very poor security against such power.'

"Mr. AMES expressed his coincidence in this argument of Mr. Scott's. He had before contended that 'the superintending power possessed by the President will perhaps enable him to discover a base intention before it is ripe for execution. It may happen that the treasurer may be disposed to betray the public chest to the enemy, and so injure the government beyond the possibility of reparation, should the President be restrained from removing,'" etc.

4. When the Bill establishing the Treasury department was under consideration, a discussion arose upon that provision of it which required the Secretary to "digest and report plans for the improvement and management of the revenue."

"Mr. GERRY, in opposition to the clause, said: 'What is this officer to do? Why, he is to digest and report plans for the improvement of the revenue. Now if this does not comprise the power of originating money bills, I do not know what does. This would be investing the President with a most alarming power.'

"Mr. VINING, who was in favor of the provision, remarked 'that this officer would be an auxiliary of the Executive when he reports his plans.'"

It is worthy of remark that of the eleven who composed the committee which reported the bills, seven participated in the discussion: of these, five admitted expressly, and the others by implication, that the power of removal, which the Bill they reported recognized to be in the President, included that of direction; five — among whom were Messrs. Gerry, Vining, Madison, and Livermore — apply the principle to the case of the Secretary of the Treasury; and from no one do we hear a contrary suggestion. Mr. Binney quotes from the debates, and is evidently familiar with them. Yet he asserts and argues that the Act prepared by this committee makes the Secretary independent of the President.

We might multiply quotations, similar to those we have made, indefinitely. Nothing can be more explicit than those we have made. The framers of our political system could not

have declared more unequivocally their intention to make the Treasury an executive department, and to subject its officers to the supervision and direction of the President.

III. *Universal opinion and universal practice, ever since the establishment of the Treasury, have considered it as an executive department.*

1. The law under which, with its amendments, the officers of this department have always received their salaries, is a law to fix the "salaries of the executive officers of government." The removal of this department to Washington took place under the law for removing the "executive departments."

2. Under that provision of the Constitution which empowers the President to require the written opinions of the principal officers of the executive departments, it has always been customary for the President to receive the opinion of the Secretary of the Treasury. It is believed that the first requisition of this kind was made by Washington upon a subject intimately connected with the peculiar duties of the Treasury department.

3. In a discussion upon a proposed reference to the Secretary of the Treasury, the executive character of the Secretary and his subjection in his ordinary duties to the direction of the President was admitted by both parties.

4. It has been the universal custom for the Secretary of the Treasury to participate in Cabinet deliberations, acting as the official adviser of the President, and holding the same relation to him as the heads of the other departments. It would be difficult to find any law imposing such duties upon him, or to justify his performance of them, except upon the ground of the executive nature of his office.

5. The official reports of the different secretaries are full of acknowledgments of their executive character. We might quote to an indefinite extent from such sources.

6. We quote the opinions of a man whose sentiments upon questions of this kind are a higher authority with his countrymen than those of any other, and who was ever the unshrinking defender of popular rights and the inflexible opponent of

the encroachments of executive power — we quote from Thomas Jefferson. After explaining and defending the construction of the executive department in our government, he proceeds:

"Aided by the counsels of a cabinet of heads of departments, originally four, but now five, with whom the President consults either singly or altogether, he has the benefit of their wisdom and information, *brings their views to one common centre, and produces a unity of action and direction in all the branches of government.* The excellence of this construction of the executive power has already manifested itself under very opposite circumstances."

When Mr. Jefferson was in the Cabinet of Washington he asserted the opinion that the Secretary of the Treasury was "under the President alone." His published writings contain many similar opinions. Those who wish to pursue this investigation will find a masterly exposition and defence of the doctrine we have maintained in his letter of Jan. 26, 1811, to M. Destutt Tracy, from which our extract is taken.

Upon a review of the facts, the evidence, and the authority, we may safely affirm that if any one power of the President rests upon the impregnable basis of the Constitution, it is the one for the exercise of which, in the madness of party violence, he has been denounced as a tyrant and a usurper.

V.

For reasons which were generally approved, not only by his own party, but also by the country at large, Mr. Van Buren, in his Inaugural Address as President, in March, 1837, announced, among other things, that if any bill abolishing slavery in the District of Columbia should pass the two Houses of Congress, he should deem it his duty to veto such bill. The "Plaindealer" — a weekly sheet which had been started the year before, under the editorial management of William Leggett — made this announcement the occasion for assailing the new President and his Message in the most unmeasured terms. His motives were impugned, his official attitude and bearing were offensively contrasted with those of his immediate predecessor, and he and his Administration were delivered over to the execration of the not uninfluential, though restricted, circle that was wont to follow the editor. Prior to founding the "Plaindealer," Mr. Leggett had been for nearly eight years assistant-editor of the New York "Evening Post," where he had won the ear of the Democratic party of the country by his vigorous championship of the measures of Jackson's Administration. This assault upon the President, therefore, from such a quarter, at the very beginning of his Administration, surprised and pained not only the President's friends, but the friends of Mr. Leggett also. Mr. Tilden, who was an esteemed friend both of Mr. Van Buren and of Mr. Leggett, thought the article of sufficient importance to be replied to. For reasons which he himself sets forth, he chose not to use the "Plaindealer" as his channel of communication with the public, but addressed the following letters, over the signature of "Jacksonis Amicus," to the New York "Times," — a Democratic paper of the

day, which was under the editorial management of Dr. William M. Holland. Mr. Theodore Sedgwick, the biographer of Leggett, in republishing the article from the "Plaindealer" in his collection of Leggett's writings, felt constrained to say that the Message of the President neither warranted nor justified either the criticism or the imputations of Mr. Leggett.

The "Plaindealer" transferred the first two letters of Mr. Tilden from the "Times" to its columns, and gave a brief introduction, which, for the better understanding of some of the passages in the third letter, is here reproduced. The "Plaindealer" was not successful as a business enterprise, and Mr. Leggett, broken down in health and fortune, was soon obliged to abandon it. Mr. Van Buren, long after Mr. Leggett's ability to mend or mar his fortunes had ceased, took a noble revenge upon his impetuous critic by conferring upon him a diplomatic mission to Guatemala. Mr. Leggett, however, did not live to reach the seat of his mission.

PRESIDENT VAN BUREN'S INAUGURAL ADDRESS. — SLAVERY IN THE DISTRICT OF COLUMBIA AND WILLIAM LEGGETT.

DEFENCE OF MR. VAN BUREN'S INAUGURAL ADDRESS.[1] — A London journal describes the conduct of one of the violent reformers in the British House of Commons, who commenced the session with a vehement tirade against the Whig ministers, as the opposite of that of the critic in Molière, who, going to see a new play, began his applause before the lamps were lighted. The English reformer, on the contrary, according to the London journal, goes to a new play and begins to hiss and cry "Off! off!" before the curtain is drawn.

A writer in the "Times," under the signature of "Jacksonis Amicus," seems to think that this paper has been guilty of equal precipitancy of censure in the remarks it has expressed concerning Mr. Van Buren's Inaugural Address. If we have done the new President injustice, we shall at least not show such obstinacy in wrong as to withhold reparation, and therefore copy entire the articles of our antagonist. Our readers will thus have an advantage over those of the "Times," to whom but one side of the controversy is submitted.

There is nothing in the articles which we copy that requires particular answer. The charge against us of misquotation of Mr. Van Buren's language is absurd, in view of the fact that our remarks accompanied the Inaugural Address, which was inserted at full length in our columns. The allegation that Hamilton was in favor of a strict construction of the Constitution, and Jefferson and Madison of a construction founded on the intentions of the framers of that instrument, is not supported by the facts. Hamilton, it is true, was for putting wholly out of sight the fact that the Convention had rejected a proposition to give to Congress the power of creating corporations; and Jefferson and Madison referred to that circumstance as incidental or collateral proof of the soundness of their interpretation of express provisions. But Hamilton was in favor of such a latitudinarian construction as would render the phrase "necessary and proper" of no greater force than the mere term "convenient;" whereas Jefferson and Madison contended that Congress had no right to pass any law that was not both positively necessary and positively proper to carry into effect the express powers of the Federal Government. This point is not a matter of argument, but of fact; every reader may satisfy himself by referring to the recorded opinions of the individuals named. They will find them all in the work entitled "Legislative and Documentary History of the United States Bank."

With regard to the sketch which the author of the subjoined articles has drawn, submitting it to the public as a portrait of the conductor of this paper, we have nothing to say; no man is a judge of his own likeness. The limner in this case is certainly free from the usual fault of portrait-painters, — he does not flatter. If the features of our intellectual aspect are truly portrayed, their ugliness, we should think, would be beyond dispute. But this is a matter for others to decide upon, not for us. Having challenged any writer to show that our animadversions upon Mr. Van Buren were not just, we feel, in some sort, under an obligation of honor to publish the strictures of "Jacksonis Amicus;" and this obligation would have been more imperative had he taken the franker and more manly course of addressing his communications to this paper.

[1] From the "Plaindealer," April 1, 1837.

I.

TO THE PLAINDEALER:[1] Attached to you, and frequently your defender when your doctrines found little favor with the public, the regard I yet retain for you impels me to state the grounds of my present dissatisfaction. I shall do so the more frankly, that if my strictures contain aught of error or injustice, no journal is better able to expose the one or repel the other.

Your animadversions upon the President's Inaugural appear to me singularly unjust. Your first exception to that address is the vagueness of its avowal of principles. Now the real question is, whether that avowal is such as was suited to the occasion? A discussion of particular measures of public policy would seem better reserved for the Annual Message; it could not now produce legislative action, and it would swell the document to a volume wholly unsuited to the circumstances of its delivery. Its only conceivable utility would be to inform the people as to the opinions of an officer whom they had just elected. Even in that point of view I cannot consider it of much importance; for it is to be presumed that the people had sufficiently acquainted themselves with those opinions before the election, and if they had failed to do so until the time for acting upon the information had passed, it would come a little too late to be of much value. It appears to me, then, that a very general expression of feeling and opinion is all that the occasion requires. The attempt to embody a system of political doctrine and public policy in the brief space usually allotted to it in such addresses — stating general principles without their natural limitations, and yet so guardedly as to be essentially true, and omitting the application of them to specific measures — has generally produced a collection of mere

[1] From the New York Times, March 23 to May 12, 1837.

truisms. You speak of Mr. Jefferson's Inaugural as a model. I wish you would republish that noble document: your columns could not be better filled; at the same time it would admirably illustrate my present idea. In that part of it which is devoted to a statement of his principles of administration, there is not a single position which did then, or would now, excite any considerable dissent, wide as were, and still would be, the disagreements that arise in the practical construction and application of those principles. As an indication of the specific differences which separated the parties of the day, that address is more indefinite than Mr. Van Buren's. Several years ago Mr. Van Buren publicly expressed a readiness to state his opinions to any who desired information of them; and he has fully and frankly replied to all interrogations on the subject, even when made with an evident design to embarrass him. He has thus published elaborate discussions of all the prominent questions of public policy so extensive that, if collected, they would form a large volume. No man ever entered the executive office with the means in the reach of the people of so accurate and minute a knowledge of his opinions. In this address he has reviewed the principles of our foreign policy; he has stated, with distinctness and felicitous precision, his rules of constitutional construction, — the source of which no one who is conversant with the writings of Jefferson and Madison can fail to recognize; he has referred to his previously expressed opinions on questions of domestic policy, and declared his intention of carrying them out in practice. I do not see what more was necessary or appropriate to the occasion. If any man is deficient in the slightest requisite information on the subject, it is not Mr. Van Buren's fault.

But there is one point on which the President has expressed his opinion with particularity; and for doing it in this instance he has provoked far greater censure than for not doing it elsewhere. The offence is not the principles he holds, or the occasion on which he has avowed them; not at all. "A calm repetition of his previously expressed sentiments" was

quite proper. The wrong in this case is that there is "a superabundance of particularity and distinctness!" Really, Mr. Plaindealer, I do not see how it were possible to suit you exactly, unless you had written the address yourself. It is a nice matter, this, to adjust the precise *quantum* of "particularity and distinctness" appropriate to each case, and one on which the writer and the critic might very naturally disagree. For aught I know, your judgment may be right in both instances; but it seems to me a small point on which to hang degrading charges against one in whose talent and virtue you had frequently expressed a well-considered confidence.

I pass to the main point, — whether the distinctness of the President's avowal be so improper as to justify the manner in which you have characterized it? I believe that there are adequate and imperative reasons for that distinctness, — that it is strictly and triumphantly defensible; and if anything more is necessary to be said on the point when I have treated the precise question between us, I am at your service. But you have not alleged mere impropriety, you have predicated far deeper imputations; and it is upon their justice, logically and morally, that I now make the issue with you. Ex-President Jackson, in his farewell address, which you have made the theme of enthusiastic and indiscriminate eulogy, has impressively warned us of the incalculable value of the Union, and of the extent and source of its present perils. He has told us that "systematic attempts are publicly made to sow the seeds of discord between the different parts of the country," to array section against section, and "to force into the controversy the most delicate and exciting topics;" and he has pointed us to the very subject of this avowal as the source of the evils. My own consciousness attests that it is possible for another to entertain a similar opinion. Suppose that Mr. Van Buren does so. He has in this address, and more than once before, declared it; and it is not incredible. He might have thought also — and he would not be singular in the opinion — that such a declaration as he has made would tend to tranquillize sincere alarm and to repress

sinister agitation at the South, and thus to avert the fearful evils that menace us. He knew also that many were so predetermined to regard him as non-committal, that a sunbeam, if from him, would but throw mist into their eyes. He knew that the agitators had perverted, and would again, if possible, pervert his words to their purposes of mischief. There existed a strong motive of patriotism for distinctness, and the occasion was adapted to give it the desired effect. The object is a great and holy one, the motive most powerful to a patriot; but the sacred impulse of patriotism may carry him too far. What has he done? Has he sacrificed principle? Has he violated duty? Has he falsified opinions professed or pledges given? Oh, no! He has repeated opinions with "a clear knowledge" of which the people elected him, and added that he shall act in the only way in which any one will pretend he can act consistently with those opinions! You admit that a clear constitutional difficulty might justify this odious explicitness. Recollect, then, that before the election he distinctly based his determination, in reference to the one case which the declaration contemplates, upon the clearest want of constitutional power, and in the other on objections, in his opinion, "as imperative in their nature and obligations as the most palpable want of it." Can there be a doubt as to the duty of a man entertaining such opinions? And when he has solemnly declared that he will exercise his official functions in accordance with those views, how much short is it of declaring that what conflicts with those views cannot "receive his constitutional sanction?" What is this mighty matter but a little different marshalling of words, an expression but a shade more distinct? You admit that what is now avowed, was before so distinctly implied that the people elected him with "a clear apprehension" of it, and that it was quite proper to imply it as distinctly on this occasion. But lo, he has said it! I put it to yourself whether this be a matter utterly incompatible with the unsullied honor of a man of whose character and conduct in other respects you profess the highest opinion. I ask if the sentiments emphatically expressed by

him, as well as by General Jackson, do not supply an obvious motive to his conduct, and if the most obvious motive be not virtuous, and patriotic, and more than adequate? If, under such circumstances, an enemy had imputed evil motives, the violation of logic and of justice might be accounted for on the score of prejudice; in him it would at least have been consistent. But the "Plaindealer's" prejudices, if it have any, are all on the other side; its deliberately formed and frequently expressed opinions and feelings are all strongly favorable to the President. And yet does it see in this little matter cause for accusations of a "gross breach of public decorum," "a cringing spirit," "an ignoble spirit," and other imputations commonly regarded as opprobrious and infamous, and by itself avowedly esteemed doubly so!

JACKSONIS AMICUS.

II.[1]

MR. PLAINDEALER: — Pardon me for saying, in my yesterday's communication, that you have quoted the address unfairly. You have taken from the middle of a sentence the expression "in accordance with the spirit that actuated the venerated fathers of the Republic," and, representing it as the reason assigned by Mr. Van Buren for his course on a question of expediency and propriety, have rung the changes on its vague insufficiency. Now what he did state was his belief that the opinions he expressed on that question were "in accordance with the spirit that actuated the venerated fathers of the Republic, and that *succeeding experience had proved them to be humane, patriotic, expedient, honorable, and just.*" Why then quote just enough to give plausibility to your charge? If you had given the whole sentence, or a less number of words from the latter part of it, that charge would have needed no answer.

[1] From the New York Times, March 25, 1837.

But you have still another use for that same fraction of an expression. You next represent it and treat it as if Mr. Van Buren had stated it as his rule of constitutional construction! To be sure, this is inconsistent with your former use of it. To be sure, the latter half of the sentence shows that it could not possibly be such a rule. Avoiding this last difficulty by your fractional mode of quotation, you complain of the vagueness of the rule; you proceed to speak of the spirit of the Constitution as the guide of the Federal party, and the letter as that of the Democratic party, — arraying on the one side Hamilton and his bank, the high tariff, the internal improvement, distribution, and the other "aristocratic" systems of the modern Whigs, and on the other, Jefferson, equal taxation according to the wants of the Government, and General Jackson. Adding to the convenience of your method of quotation that of your new mode of characterizing parties, you do indeed get Mr. Van Buren on the wrong side; and then you intimate that "appearances authorize a fear" that he means to act contrary to his whole public life, to all his avowed opinions, and to his repeated and solemn pledges! Undoubtedly the Federal party have generally adopted a loose, and the Republican a strict, construction of the Constitution; but to speak of one so adhering to the spirit in opposition to the letter, and the other to the letter in opposition to the spirit, seems to me a rather loose mode of characterizing them. The case in which it was most nearly true of them was certainly that of the first bank; but their positions in that discussion were, as they thought, precisely the reverse of what you have stated. It is a matter of history that in that controversy Hamilton maintained that a written constitution should be construed exclusively by its text; while Jefferson and Madison contended that it should be construed by the intent of its framers as evidenced by contemporaneous discussions and expositions, as well as by the text itself: and it was upon these different rules of construction that they based their respective arguments as to the constitutionality of the bank. But why waste words upon the illustrations, merely

because they are untrue, when the principal fact is wholly unfounded, and the sole inference drawn from it is an exactly inverted one? In leaving the point, however, I cannot forbear suggesting to you that when you have finished your reform of the currency and banking systems, and ostracized all who doubt your complete information and infallible judgment on the subject, you should read the report of Hamilton, the speech of Madison, and the opinion of Jefferson on the question that lies at the foundation of the subject, that you may not again reverse their positions as to the point on which that controversy turned. Allow me further to recommend to you to read certain other works of Jefferson and Madison, lest when you have again occasion to arrange your political files, they get cashiered for the awkwardness they will naturally feel in the strange position in which you may place them.

But if there were an ambiguous expression, or one susceptible of a construction that would imply the doctrine you have ascribed to Mr. Van Buren, there could be no apology for imputing to him such a doctrine directly in the face of an explicit declaration in the same address. Nor is that declaration one likely to pass unobserved. It forms a separate and a not obscure paragraph of the address. I wish you would read that paragraph and compare it with your own imputations; and I will ask no other decision than your own in the matter. Mr. Van Buren has there stated, with great precision and felicity, the doctrine of Jefferson and Madison. He has declared that the principle which will govern him is "a strict adherence to the letter and spirit of the Constitution as it was designed by those who framed it;" he has spoken of the Constitution "as limited to national objects," and "as leaving to the people and the States all power not explicitly parted with;" and he has promised "to preserve, protect, and defend it, by anxiously referring to its provisions for direction in every action." If an enemy had made a series of perversions so forced and of garbling so palpable, do you think it would not have been ascribed to something more intentional than the mere bias of

party? And you, who have lacerated the feelings of an amiable man for the changing a single word without injury to the author, and confessedly with the kindest intentions, bethink you in what terms you would have spoken of another who had made such studied misrepresentations, and then built upon them revolting charges against one in regard to whom he professed the best feelings and the highest opinions! What indignation, eloquent of scorn and reprobation, would you yourself have visited upon such a man? What then has caused such conduct? I fear that the mass of all parties will see in it wrong as outrageous and treachery as calculating as the pretensions to justice are monstrous and the professions of friendship hypocritical, with which it is sought at once to conceal the coward design and to add effect to the blow. For my part, I will not believe it. I prefer a kinder theory. May there not be an eager desire to signalize one's independence, that in its heady course sometimes tramples down consistency, justice, and sincerity? I know that there are difficulties in the theory, but I will try my best to make it plausible.

It is unfortunately the case that those who particularly affect a virtue are apt to fall into the corresponding vice.

> "Brevis esse laboro,
> Obscurus fio; sectantem levia nervi
> Deficiunt animique; professus grandia turget;
> Serpit humi tutus nimium timidusque procellae;
> Qui variare cupit rem prodigialiter unam,
> Delphinum silvis appingit, fluctibus aprum."

Impartiality and independence also have their counterfeits. I know that there is a class of no-party men who vindicate their claim to that character by doing injustice to all, even without the excuse of bias. I know that society is sometimes troubled with "I-always-speak-my-mind" nuisances, who seem to think it a virtue to violate the comities of social intercourse, and always to sacrifice the feelings of others to their own caprice or ill-nature. But to be really impartial and independent, a rare assemblage of mental and moral qualities is requisite. First, a power of just reasoning, with especial freedom

from rashness in the induction of general principles, and a confident reliance on their universal and exact truth; then, a moderation of character which lessens the bias of controversy and saves from false extremes; a freedom from that arrogant pride of personal independence that does not allow of profiting by the opinions of others; and above all, a pervading sense of justice that is cautious to do no wrong. A man who is so unfortunate as to possess the reverse of these qualities, is mentally and morally disqualified for genuine impartiality and independence. If he be afflicted with the desire of appearing distinguished for the qualities he most lacks, the disease becomes a mania. He considers it a derogation from his personal character to concede aught to the feelings or opinions of others; forgetting that without such concession there can be no common action for a common object, and that without the capability of such action, a man is fit, not for society, not even for a state of nature, but only for absolute solitude. Absurdly attempting to act with others, he is not satisfied with devoting himself, as he has a right to do, to the maintenance of his peculiar sentiments, but must force those sentiments upon his associates. Even then he cannot content himself with leading on a change in opinion, the slow progress of which in masses is the sheet-anchor of safety. He will not give others the opportunity of investigation he has previously had. He makes no allowance for deficient means of information, for habitual moderation, or constitutional caution. Still less does he tolerate dissent, or a qualification of his extremes. All must be convinced wholly, and *instanter*. With eyes closed and throats distended, they must force down his newfangled doctrine, with all its sharp points and its impure crudities, under the penalty of being held up to "public reprobation and scorn" as false to the common object. If he is in any measure successful, he ascribes to his very faults what is due to truth struggling to light through the impracticability of its advocate. Nor does the folly end here. He is an independent man, forsooth! and he must prove it. He must maintain his individuality among

his associates even to the injury of the common object. Lest he seem partial to his friends, he inflicts outrage upon them. To avoid the appearance of an amiable weakness, he commits actual injustice and treachery. Boasting his freedom from the least excess of a noble and generous sentiment, he is the slave of an exaggerated idea which springs from a pitiful vanity. Friendship has less influence on his opinions and conduct than opposition; the one cannot moderate or restrain him, but the other can drive him to absurd extremes. He is to his friends an enemy, to his enemies a slave. He is independent of authority, and therefore attacks what is authorized, even though it be right. He despises the delicacy which alone renders social life tolerable, and therefore violates the privacy of retirement and lacerates personal character. He is above regarding what mankind esteem most sacred. He assails the revered usages of religion; his vampire-tracks are upon the graves of the dead. All the while he mistakes his own motives; if he had applied the test of common sense, he could not have been deceived. Impartial justice, when forced to condemn, does not exaggerate the fault. When speaking solely from public motives, and through an organ modulated by personal benevolence, its voice is of forbearing censure, not of angry crimination. Impartial justice does not commit palpable and outrageous wrong. If a little adulterated by human frailty, it does not inflict such wrong on friends whom that weakness would naturally favor. He mistakes also the consequences of his conduct; injustice, or even harshness, in the judge causes an undue sympathy for the guilty that foils the end of punishment. He mistakes the character in which he acts. He fancies that, as a universal Aristarchus, he rules and rights the world; while he serves it, if at all, as a public flagellator. I have drawn a picture — I leave to the public to say if it be a portrait.

I have admired your talent. I have applauded the zeal and effect with which you have frequently vindicated just principles. I have sometimes stood with you when we were almost

alone, and at others, in common with all who differ from you, have been included in your general and intolerant censures; but even then I have thought kindly of your intentions. I have on this occasion spoken frankly, and I do not see that you have reason to complain. I ask those who read these strictures, as they do so, to compare them with your article, and see if I have misquoted you or strained a point in a single instance, or imputed a motive which the case did not more than warrant. I have spoken of you solely in a public character, in which you have volunteered to appear, and only in vindication of those whom you have prostituted that character to injure. The glare of affected independence is apt to deceive, and when coupled with professions of friendship may enable you to injure, where your open enmity would have little power to harm; and therefore I have exposed it. One who is accustomed to subject the conduct, character, and motives of others to such a "free discussion," and who is so able in the combat, ought not himself to shrink from its ordeal. Even if he receive an occasional scratch, he who plays with so sharp a weapon should not ask his antagonist to use a foil.

JACKSONIS AMICUS.

III.[1]

MR. PLAINDEALER, — I have just received your last number, in which you publish my articles, with comments, some of which require a moment's attention.

I began my first number with the intention of addressing it directly to the "Plaindealer;" but the nature of the exposition led inevitably to a mode of expression which might be excepted to by the subject of it, and I could not undertake to subdue my phrase to his partial standard. In adopting another channel of communication, I waived a claim of my own, but disregarded no right or interest of my antagonist. He has no reason to complain that I thus rendered less involuntary the

[1] April 4.

fulfilment of an obligation, his honorable and liberal sense of which claims from me an acknowledgment.

You say: "The charge against us of misquotation of Mr. Van Buren's language is absurd, in view of the fact that our remarks accompanied the Inaugural Address, which was inserted at full length in our columns."

Do you think, then, if you tore parts of sentences from their connection, misapplied and misconstrued them, and thus extorted a meaning injurious to the author, that all your readers would be able or would take the pains to rectify the injustice, especially those who were predisposed to believe the imputations? Would such be the case when, in subsequent articles, those imputations became positive assertions, and the antidote was no longer at hand? You are too experienced a controversialist not to be aware that the mode of exhibiting evidence is often not less important in producing an impression than the evidence itself. No, sir; my allegation was not "absurd." The circumstance by which you attempt to show it such, however it may affect the intention, cannot disprove the fact.

Again, you say of the Constitution: "The allegation that Hamilton was in favor of a strict construction, and Jefferson and Madison of a construction founded on the intention of the framers of that instrument, is not supported by the facts."

I did not assert that Hamilton was in favor of a *strict* construction, but of a *literal* one, which I spoke of, and which he agreed with Jefferson and Madison in considering as the *looser* mode. But I will not here dwell on a point which is fully discussed in my last article, to which I refer the reader.

Returning to the general discussion, I come now to the precise issue, — whether Mr. Van Buren's doctrine will stand by "the Jeffersonian touchstone." Bring we forth that test. In a letter to Judge Johnson, Mr. Jefferson thus states it: —

"On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates; and instead of trying what meaning

can be squeezed out of the text or invented against it, conform to the probable one in which it was passed."

In the celebrated "Declaration and Protest on the Principles of the Constitution" prepared by Mr. Jefferson for the Legislature of Virginia, and whose object was to resist the loose principles of construction which prevailed in Mr. Adams's Administration, he maintains that the Constitution should be "construed according to the plain and ordinary meaning of its language, *to the common intendment of the time and of those who framed it.*"

Now compare with this test Mr. Van Buren's doctrine, — "a strict adherence to the letter and spirit of the Constitution *as it was designed by those who framed it.*"

The only doubt I see about the matter is whether Mr. Van Buren has sufficiently regarded Mr. Jefferson's "right of literary property" in that very last clause which you have italicized as particularly obnoxious. But let us have your comment in your own words: —

"To administer the Constitution as it was designed by those who framed it, opens a boundless field of construction, unless we do 'the venerated fathers of the Republic' the simple act of justice to believe that they said what they meant; in which case the letter of that instrument would become our guide, and in which case, also, it would be the shortest and most explicit way to say so, instead of wrapping up the declaration in sugary periphrases."

The doctrine repudiated has been already compared with that of Jefferson. I ask any one who is anxious to know the paternity of the doctrine embraced to compare it with that of Hamilton, which he thus states: "Whatever may have been the intention of the framers of a constitution or of a law, that intention must be sought for in the instrument itself, according to the usual and established rules of construction." You little thought, Mr. Plaindealer, when you sought to condemn another, that he would be acquitted and yourself convicted by the very test you proposed! And when you brought forth to the trial your "Jeffersonian touchstone," you little

knew that you had mistaken the ebony of Hamilton for the topaz of Jefferson!

In leaving the subject, I owe an act of justice to Andrew Jackson. If you have truly represented him as opposed to a doctrine which I have shown to be coincident with the "Jeffersonian touchstone," he must fall by that test. You state the case thus: —

"In another place General Jackson, speaking of the consequences of taking the spirit instead of the letter of the Constitution as the guide, forcibly observes that power in no government could desire a better shield for the insidious advances which it is ever ready to make upon the checks which are designed to restrain its action."

Now I have a fancy to look out my own contexts; and without obligation to you for the least hint by which to find it among the multitude of General Jackson's documents, I will produce the sentence next preceding the one you have quoted. Here it is, italics and all, just as it stands in the Maysville Veto Message: "And this will be the case if *expediency* be made a rule of construction in interpreting the Constitution."

Now, as a rule in construing an instrument, expediency is quite a different matter from "the spirit" of that instrument. Did you assert so strongly the application of the sentence you quoted without reading the preceding sentence, which alone could indicate that application? If you did read it, how could you misunderstand what is so explicit? how could you overlook the very word that is made peculiarly prominent?

JACKSONIS AMICUS.

VI.

As early as the year 1835 a proposition for the entire separation of the Government from the business of banking was submitted to Congress; and the President, together with Wright, Benton, and other prominent friends of the Administration, were impressed with the conviction that there was not only no necessity, but even great mischief in the connection which subsisted between them. The business aspects of the country were such at the moment, however, and public opinion was so imperfectly prepared for a change, that it was not thought expedient to press it. But when the great financial collapse of 1837 occurred, and the banks, in consequence of their suspension of specie payments, ceased effectively to discharge the function of fiscal agents of the Government, the time seemed to have arrived when such a change was deemed not only practicable, but indispensable. The plan for an independent Treasury was shadowed forth in the columns of a leading Democratic print, published, in the neighborhood of Senator Wright's residence, in the summer of 1837; and at the opening of the special session of Congress in September of that year President Van Buren made his opposition to a national bank and to a renewal of any connection between the State banks and the Federal Treasury, a conspicuous feature of his Message.

A criticism of the financial feature of that document, signed "Marshall," appeared shortly in the Albany "Argus." It was written, as afterward transpired, by a person in the office of the Attorney-General, the Hon. Samuel Beardsley. The writer, while affecting to be a friend of Mr. Van Buren, insisted that the refusal to receive State bank-notes in payment of Government

dues would lead to disastrous consequences, cause gold and silver to be hoarded, prevent the circulation of bank-notes, and inure to the advantage of Government agents at the expense of the people.

Mr. Tilden sprang to the defence of the Message and its author; and the following articles, printed in the "Argus," were his contributions to the controversy.

Fully to comprehend the spirit and purpose of "Marshall's" articles, it should be known that at the session of the Legislature which had that same year re-elected Mr. Wright to the Senate, Mr. Beardsley had been a rival and a disappointed candidate of the various elements of the party that had been disaffected toward Mr. Van Buren by his radical financial policy.

These articles were introduced to the readers of the "Argus" as entitled to the attention of the reader, not less from their "source (a highly intelligent citizen of a neighboring county), than from the importance of the subject and the ability with which it is treated."

PRESIDENT VAN BUREN'S FIRST MESSAGE. — THE DISUSE OF BANK-NOTES BY THE GOVERNMENT.[1]

I.

A WRITER in the "Argus," under the signature of "Marshall," begins a long article of animadversion upon the Message by professing the highest "respect for the talents" and "admiration of the wisdom, integrity, and political sagacity of Martin Van Buren." He illustrates his idea of these sentiments by pronouncing one of the essential recommendations of the Message "wholly impracticable," and declaring it "susceptible of demonstration that its tendency, if carried into execution, would be to paralyze and prostrate the energies of the country."

I profess no such respect and admiration as that for the character of Martin Van Buren. I must be pardoned if I do not think him capable, after long deliberation, and in a distressing public emergency, of proposing to the nation a measure not only "wholly impracticable," not only calculated to "paralyze and prostrate the energies of the country," but whose folly and mischief are so clear and certain that they may, in the most emphatic terms our language supplies, be "demonstrated." And I propose briefly to examine the process of this demonstration, and see if, after all, the conclusions be not rather imaginative than mathematical.

The writer affirms — and the idea runs through the whole first column of his article and is the essence of his argument — that a refusal by the Government to receive convertible bank-

[1] From the Albany Argus, Sept. 28, 1837.

notes in payment of its dues will "create two currencies,—one of enhanced value, to be devoted exclusively to the use of the Government; the other of depreciated value,—depreciated by this act of discrimination,—for the exclusive use of the people."

Now if this proposition be offered as a conclusion, it wants both the premise and the demonstration. Instead of belonging to the class of mathematical truths, it is manifestly absurd. A very small share of common sense, or a very slight acquaintance with the subject of currency, are, either of them, sufficient to show that paper, convertible into coin, cannot depreciate as compared with coin; and with this radical fallacy falls the whole superstructure of mischiefs which the writer has reared upon it,—the premium upon specie, the illicit profits of Government officers, the insatiable demand upon the banks for specie, and the consequent reduction of their issues to the amount of their specie, or general suspension of cash payments. Let "Marshall" calm his apprehensions; the state of things he fears can never exist, except in a morbid imagination.

The writer maintains that a refusal to receive bank-notes for Government dues will so discredit them as to drive them from circulation. If their credit rest upon the mere fact that Government receives them, the sooner it perishes, the better. That fact in no measure insures their solvency, and if it alone give them currency, it imparts to them a fictitious credit, which can produce nothing but mischief, and should give place to a natural, just credit, founded on a confidence entertained in the probity, skill, and resources of those who issue them. But "Marshall" does the banks injustice. Their credit was not derived, and cannot be destroyed, by the circumstance to which he ascribes such power over it. The writer does not seem to be aware that but a small part of the notes of the banks were ever receivable for Government dues; those only which were "convertible into specie upon the spot, without loss or delay to the holder," or, in other words, those which

were at par in the great commercial points where the revenues are collected. Before the suspension, the bills of probably less than thirty out of some eight hundred and fifty banks and branches were receivable in New York, where a large portion of the revenue accrues; those of a vast majority of the banks were nowhere receivable. Yet their business went on buoyantly under the mountain load which is now to crush them, and they circulated at least enough of their notes. It is true that their bills were at a discount at the great commercial points; but that was the cause, and not the consequence, of their disuse by Government.

The effect of this disuse is greatly overrated by "Marshall." The Treasury would not be, as he seems to suppose, an insatiable vortex, into which the currency of the country would pour itself, never to reissue. A stream, nearly equal, would constantly flow through it, but no large amount would be withdrawn from the general circulation. The currency required for the use of the Government bears the same proportion to the general currency as do the money transactions of the Government to those of the whole people; and the proposed system would simply substitute coin for paper in the small part of the entire currency. In practice, the accumulation in the Treasury would equal the public deposits, which need not, ordinarily, exceed five millions, nor ten in any case. Ample experience has shown that fluctuations in the amount of the deposits may be confined within this limit. If the recent mischievous accumulation was not unavoidable under the old system, it certainly could never have occurred under the proposed one, the operation of which would be a powerful restraint on fluctuations in the revenue, and would present a constant inducement to all parties to maintain an equality between the Government receipts and expenditures, unobstructed by the selfish interests of traders on the public money. But, to put the whole matter at rest, the accumulation can easily be limited, at will, by authorizing the Secretary of the Treasury, whenever it exceeds a specified amount, to invest the surplus

in State stocks. If the specie in the Treasury should ever exceed that amount, it could only be because the holders of the drafts preferred it to remain there and to retain and use the drafts. Government would certainly not interfere with individual discretion in the matter; and the banks can neither claim as a right, nor acknowledge as a necessity, such an interference. Such a currency, as far as it should exist, would be pregnant with important benefits to the country.

Since the measure proposed would substitute coin for some five or ten millions of our mainly paper currency, I would suggest it to those who are so tremblingly alive to the necessity of "enlarging the specie basis" of the currency, as a better mode of accomplishing their object than the introduction of sixpenny shinplasters, or the locking up of bank-notes in the vaults of the Treasury.

The incidental influence of the system on business would be highly salutary. An excess in banking and trade causes the public revenues to accumulate. If they be deposited in banks, they are, as fast as they accrue, loaned out to individuals; and, constantly passing round the circle, by enlarging the profits of the banks, and giving an indefinite credit, for duties, to the merchants, they stimulate both to constantly increasing excesses. The withdrawal of the accommodations, also, invariably takes place at a moment when trade is most extended and sensitive to disturbance, or when a revulsion has already begun. The financial action of the Government thus urges to both extremes the natural vibrations of trade, and aggravates the evils which they inflict upon the community. But under the proposed system, the increase of the receipts beyond the expenditures of the Government — which is the first effect of an excitement in banking and trade — would create a specie demand upon the banks, restraining their issues and allaying the commercial excitement. The check would be limited to the increase of specie allowed, would operate gradually, and be applied in the very incipiency of the disorder; and when a revulsion in trade should

reduce the receipts below the expenditures of Government, the payments from its previous accumulations of specie would mitigate the evils of the reaction. Thus might the ordinary and legitimate operations of Government, instead of being an active cause of derangement, exert upon business a far greater sanitary power than any complicated system of regulations which has ever been devised.

"Marshall" argues, from the present difficulty of procuring specie for the payment of postages, that the collection of all the public revenues in that medium, in ordinary times, would be scarcely practicable. Now the truth is that the present difficulty arises solely from the suspension of the banks, which caused a difference in value between coin and bills. Two currencies of unequal values cannot circulate together; every man retains the more, and forces off the less valuable. Hence it is that specie, which was abundant before the suspension, can now be scarcely obtained for the purposes of change. It circulates in no case in which the cheaper medium can be substituted; and the multitude of shinplasters now afloat shows that the tendency to that substitution is stronger than the laws. When an equality of value between coin and bills is restored, the difficulty of procuring specie will cease, and its use by the Government in connection with the Treasury drafts will occasion no inconvenience beyond the transportation of a small amount; and that inconvenience may, if expedient, be imposed exclusively on the Government officers.

"Marshall's" reasoning upon this point is in several respects defective. According to it the present inconvenience of procuring specie is not a sufficient cause for its disuse in a state of things which creates that inconvenience, but is a sufficient cause for its disuse in a state of things in which that inconvenience could not exist. The writer would scarcely be ready to carry out his reasoning in all its applications. The difficulty is at least as great of procuring specie for change as for postages; and as much proves the impracticability of its use in the one case as the other, and as imperatively requires

the permanent adoption of paper fractions of the dollar as paper in the payment of postages.

I have spoken of the disuse of bank-notes by the Government as an essential recommendation of the Message. It is indispensable to the great measure, to the advocacy of which that noble document is principally devoted. There are two modes of collecting the revenue, essentially the same. The one is to receive nothing but coin and Treasury drafts; the other is to receive also bank-notes, "convertible into specie without loss or delay," and to convert them immediately into coin. The latter mode merely shifts from those who pay the duties, to the Government officers, the transportation of the specie. It would be more convenient to the community than the former mode, and if the collection of the balances were punctually enforced, would have an equal practical utility.

But if bank-notes be retained and paid out, the pretence of separating the Government from the banks is an imposture upon the people. Under the old system, the Government accepted credits upon the books of the banks, and paid out drafts upon those credits; under this system, the Government would accept of notes of those banks and pay them out. In the one case, the public moneys were invested in accounts, and in the other they would be invested in notes, against these institutions. By the change, that part of the circulation of the banks called deposits would be decreased, and that part of their circulation called bills increased, to the amount of the public moneys, precisely as if the Government had drawn out its deposits in the bills of its depositories, and locked them in its own vaults. And the practical effect of the change would be that the Government would incur the rather greater risk of holding bills instead of deposits, and the banks would enjoy the use of the public moneys without paying the interest or rendering the services which have always been required as an equivalent. If "Marshall" be sincere in the desire he expresses, — to separate the Government from the banks, — surely he is very little aware of the effect of his own proposition.

That separation is a measure upon which a difference of opinion may fairly exist. Decided and earnest as are my conclusions of its propriety, I do not adopt it from any unkindness toward the banks, or from a belief that the so-called experiment has failed; nor am I indisposed to listen with candor to any argument by which it may be opposed. But I desire to see the question met fairly. If it be proper again to connect the Government and the banks, let it be done openly, and not by a fraud, which, under a pretence of separating them, renews the connection in a form subject to all the evils of the old system, and productive of not one of its benefits.

"Marshall" apprehends that the Government will encounter great difficulties in transferring its funds from the points of collection to those of disbursement. Since this matter concerns those only who have to make the transfers, it might be safely left to their judgment; but it is worth a moment's attention.

The aid which the Government requires or has ever received, in this respect, is greatly overrated. The more difficult of the transmissions have always been effected by the Government at its own risk and expense. The transfers required — especially since the payment of the public debt — are inconsiderable in amount, and of a character to be more profitable than expensive. They may be effected in two modes: —

First, by bills of exchange.

The revenues are principally collected at the commercial points toward which business tends, and to which the course of exchange is naturally favorable. Bills upon these points would oftener be at a premium than a discount in the places of disbursement.

Secondly, by paying to the public creditor, at par, drafts on specie in bank at the points of collection.

Such drafts, made everywhere receivable for public dues, and drawn upon at points at least as convenient as those at which the bills of the United States Bank were payable, would derive from these circumstances all the currency of those bills, and

they would possess the additional credit of being indorsed by the Government, and founded on a specie basis co-extensive with their amount. They would be received by the public creditor in at least every case in which bank bills would be so received. Incidentally they would facilitate the domestic exchanges, and form a currency combining the convenience of paper with the security and stability of specie.

II.

THE MESSAGE.[1]

To "MARSHALL:" I have read your reply to the vindication of the Message from your strictures by "Jefferson" and myself, and the rejoinder of "Jefferson," which is conclusive in regard to all the points which he has discussed. Without trenching upon the ground which he has so well occupied, I shall reply to those parts of your article which address themselves peculiarly to me.

You allege that I am unable "to discover how you can consistently profess respect for the talents, and admiration for the wisdom, integrity, and sagacity of Martin Van Buren, and yet dissent from one of the prominent measures of his Message;" you denounce me as an "advocate of a doctrine the most slavish and debasing;" and you enter into a formal defence of the right of opinion. You plead a false issue. You perfectly well know that I nowhere censured you for dissenting from the proposition of the President; that, on the contrary, I spoke of his great measure as "one on which a difference of opinion might fairly exist," and expressed a disposition to submit it to the result of a fair discussion. I questioned your consistency, not, as you pretend, because, while professing to admire the wisdom and sagacity of the President, you yet considered him as "fallible," but because, with such professions on your lips,

[1] Albany Argus, Oct. 20, 1837.

you in effect charged him with inexcusable absurdity and shameful incompetency. Professing to admire his wisdom and sagacity, you represented his deliberate proposition as being of such a character that to entertain it would dishonor the meanest capacity. Had you been content to treat that proposition as "one on which a difference of opinion might fairly exist," your professions would not have been irreconcilable, and your sincerity would not have been impeached. But you did not so treat it. You sought to degrade all who support it. You denounced it as "wholly impracticable," as "utopian," as ruinous to the whole country, and as possessing that character with the absolute certainty of mathematical demonstration. Now if the measure be justly so described, could any man entertain it without discredit to his understanding, or recommend it consistently with his integrity? Yet such, according to your representation, is the proposition of the President; and it is made in a distressing public emergency, after the fullest consideration, and under the highest official and moral responsibility. And you admire the wisdom and sagacity and integrity of a man who, under such circumstances, proposes such a measure!

For aught I know, in your vocabulary the terms "utopian" and "sagacious," "impracticable" and "wise," may be synonymous. You may admire a "utopian" "sagacity" and an "impracticable" "wisdom;" and while admiring you may be driven from the field of ordinary reason to find language strong enough to characterize the absurdity and folly deliberately committed by that sagacity and wisdom. I do not impugn your sincerity; I cannot undertake to say that your mental constitution is not the greatest phenomenon of the age.

In illustrating the position that the aid which the Government requires or has ever received in transmitting the public funds, is greatly overrated, I asserted that "the more difficult of the transmissions had always been effected by it at its own risk and expense." You quote a statement of President Jackson that "the moneys of the United States can be collected

and disbursed, without loss or inconvenience," through the State banks, and represent it as inconsistent with my assertion. Perhaps that apparent inconsistency arises from an "ignorance" of the subject. The depositories of the public funds, when they consisted of a national bank, were situated at twenty-six places, and when they consisted of State banks, at about thirty-six. The revenues are collected and disbursed at about twelve thousand points. The transmissions between the twenty-six or thirty-six places were effected by the banks; but those between those places and the twelve thousand points of collection and disbursement were effected by the Government. President Jackson made the statement quoted, to show that the State banks were an adequate substitute for a national bank as a fiscal agency of Government; and he obviously spoke of the class of duties which banks constituting such an agency are accustomed to perform. He could scarcely have anticipated that he should be understood to represent the banks as sending to remote post-offices to make collections, or penetrating the wilderness to pay Indian annuities! The transmissions effected by the banks are in the aggregate rather profitable than expensive; but some of those effected by Government — such as those from distant land-offices, or to the Indian country, or frontier posts — are far otherwise, and the inconvenience, hazard, and expense of those have always been borne by the Government.

I come now to your main position, — that the disuse by Government of convertible bank-notes will cause them to depreciate relatively to specie, and will thus create two currencies. I give the whole argument; for such is its confusion, that I cannot venture on an abstract of it or a quotation from it: —

"Were there a sufficiency of gold and silver in the country to meet the wants of the Government as well as the public, the question would be of but little importance in what currency the revenue was collected. The public in that case would sustain no inconvenience from the Government hoarding whatever came into its possession. But unfortunately this is not the case, nor can we

hope that the time will ever arrive when we shall have sufficient for the use of both. We have now more than our just proportion, and that sum is much less than the amount we should require in our ordinary transactions if all the banks were destroyed. If, then, there is not sufficient for the people as well as the Government, the deficiency must be supplied by paper. The demands of Government are imperative, and if the specie can, it must be procured, at however great a sacrifice to the debtor. Hence there will be two currencies; the gold and silver will be retained for the Government, and the paper must satisfy the people. To assert that this demand for specie and consequent proscription of bank paper will not tend to depreciate the paper, is at least indicative of a total want of knowledge of the nature and operation of a mixed currency."

You have already told us that the disuse of bank-notes by the Government "will depreciate the paper of the banks, draw their specie from their vaults," "compelling them to curtail their issues to the amount of their specie, or to suspend specie payments;" and in the first three sentences of the passage quoted you tell us that these evils will result solely from the deficiency of specie. Pass now to the next sentence for the evidence of the startling assertion that there is such a deficiency of specie. And how is it proved? You assume that the disuse of bills by Government will destroy the banks, and infer that their destruction will render the specie insufficient. In the first three sentences you argue the destruction of the banks from the insufficiency of specie, and in the fourth sentence you argue the insufficiency of specie from the destruction of the banks. You establish your first position by your second, and then your second by your first, and offer no other evidence in support of either! Nor is this all. In the fourth sentence, the destruction of the paper circulation renders the specie insufficient; in the fifth, the insufficiency of the specie enforces a paper circulation. We are elsewhere told that the paper will be rejected by the people; we are here told that "the paper must satisfy the people." Throughout both articles we are threatened with incompatible dangers, and

are menaced with an evil which implies a contradiction in terms, — a currency convertible into specie, but less valuable than specie. I gladly turn from this confusion of abortive ideas to the negative of the question.

Let us examine the allegation on which you expressly base all the apprehended evils, — that there is a deficiency of specie. In a previous article I showed that the amount required for Government use would not exceed five or ten millions; and to put at rest all doubt on this point, indicated an easy mode by which that amount may be limited at will. You do not question the position. I ask, then, is the appropriation to Government use of that small amount to produce such accumulated evils? Can we not spare to it five or ten of our seventy-five or eighty millions? What evidence, or even probability, is there to the contrary? Forced here, as elsewhere, to prove the negative of a question, the affirmative of which presents only rash assertion and indefinite apprehension, I point to the fact that, according to the Report of the Secretary of the Treasury, in a little over three years, ending last December, our specie increased forty-four millions, and leave to every man's common sense to draw the inevitable inference.

But concede that not a dollar of the specie now in the country can be spared to the use of Government, and the required amount can be procured without sensible inconvenience. The very demand would induce its own supply in the ordinary course of trade. The operation is just as certain and simple, and just about as trifling, as the filling the vacuum occasioned by dipping a bucket of water from the ocean. By a universal law, all the parts of a common circulation tend to a level. If the currency of a particular country become excessive, as compared with that of other countries, prices in that country will rise proportionately. This local rise of prices, by encouraging importation and discouraging exportation, will cause the imports to exceed the exports, creating an adverse balance of payments; and an exportation of specie will ensue, until an equilibrium of the currency is restored. If the currency of a

country be deficient, it will, by a process precisely the reverse, be restored to a level with the general currency. Now if, as proposed, the substitution of coin for paper in Government transactions should be effected in four years, the demand for specie which it would create would not exceed from one to two and a half millions a year. If it caused a contraction of the currency, an amount of specie sufficient to fill the vacuum would flow to this country. In an import and export trade of some two hundred and fifty millions, a very slight cause might determine a balance to the amount required; and it is trusted that while we could endure the expense of the purchase, the rest of the world would not be ruined by the sale. The only real difficulty about the matter seems to be that the disturbing cause is so very minute that the ordinary friction of the great machinery of trade would never allow us to measure its practical effect.

But you tell us that we have already "more than our own just proportion" of specie. What can the assertion mean? What is our just proportion? Upon what principle is it ascertained? I trust that you will elucidate the mystery.

In what possible sense can the assertion be true? England has about three times as much specie as we, relatively to her population, and a currency more than half of specie. France has a currency of five hundred and twenty-five millions of specie to thirty of paper. Nearly all the other nations have currencies exclusively metallic. By what authority, then, do you assert that "our just proportion" is fixed at so small an amount that we cannot have a dollar for the use of our Government, and that instead of "enlarging" we must diminish "our specie basis;" that we are irrevocably doomed to a perpetual recurrence of the evils we now endure, or the worse with which you menace us? By what authority do you assert that Heaven has singled us out to bear the intolerable curse of an unstable or degraded currency; that, instead of aliment, Nature has infused poison into the arteries of our body politic to carry disease and torture to every fibre of an immortal system? The

people will not believe it. They will rather see in the suggestion an interest adverse to their own in this matter.

But the assertion that we have "more than our just proportion" of the precious metals, is not only erroneous in every conceivable sense, but it evinces an ignorance of the principles of currency and a vagueness of mental habits equally astonishing. Suppose the currency of a particular country to be composed wholly of coin, and to be on a level with that of other countries. An issue of convertible paper would have the same effect in rendering it redundant as an addition of an equal amount of coin. The excess would go abroad to find a level; and the coin only having credit abroad, that would be expelled, and the paper retained. The process would continue until all the coin for which a paper substitute of the same denomination was supplied, would be displaced. With this limitation, the amount of coin which circulates in a given country is the difference between its whole necessary currency and the paper in circulation. If a nation has a larger proportion than it desires of its currency metallic, it has only to increase the paper; if a less proportion, it has only to diminish the paper. Now, in view of these obvious principles, I ask, unless a nation has more specie than gives it a currency exclusively metallic, what possible meaning can the assertion have that it has "more than its just proportion?"

The idea that there is an insufficiency of specie for the purposes of currency is no less intrinsically absurd. If the whole circulating medium of the world were but half its present amount, or if it were twice that amount, it would answer its purposes nearly as well. All that is important in regard to its positive amount is that it be not so large as to be cumbrous, or so small as not to bear subdivision. Unquestionably, a sudden change in its amount would be productive of infinite mischief. It would subvert all existing contracts by altering the standard in reference to which they were formed. But there is ample provision against this evil as far as the precious metals are concerned. The cost of producing them is nearly

invariable; they are so indestructible in their nature as to preserve the existing stock from any sudden diminution; the ordinary annual supply is constant, and is less than one per cent of the amount on hand; and there is now existing, in Europe and America alone, at least four thousand five hundred millions. So large is their amount that for two centuries their value has suffered no sensible variation, and has never been perceptibly affected by the occasional changes of particular countries from specie to paper, or from paper to specie currencies. France has twice had a currency wholly of paper, and has now returned to one almost exclusively metallic. England has had a currency of inconvertible paper, and has returned to one more than half of coin. To illustrate the very inconsiderable effect of even such extensive changes upon the mass of the circulating medium, it is sufficient to state a single fact. The resumption of specie payments in England created an extraordinary demand for gold of about twenty-five millions of dollars annually for four successive years; and although gold forms only a quarter or third part of the precious metals, the demand was met without any difficulty or sensible enhancement of its price. It is ascertained beyond the possibility of doubt that in France, with whom the commercial relations of England were most intimate, and from whom much of the supply was in fact derived, the price of gold, if affected at all, was at no time during the process, enhanced to the extent of three tenths of one per cent.[1] Every one at all acquainted with the subject knows that if the object were desired and the means judicious, coin might be substituted for the whole of our bank-note circulation without raising a ripple upon the currency of the world. The only inconvenience of the process would be its expense, and that not very formidable. The Secretary of the Treasury estimates the amount of currency required in this country at one hundred and ten millions; and whether we regard principle, authority, or experience, the estimate is abundantly large. Allowing that we have already

[1] Mr. Gallatin.

seventy-five millions of specie, thirty-five more would be sufficient. If we should leave in the banks fifteen millions as the basis of deposits, which is quite as much as has been retained for that purpose, we must either continue in circulation an equal amount of bills, which would include those only of a very high denomination, or purchase an equal additional amount of specie. If the former, we should have to purchase seven millions, and if the latter, ten millions, annually for five years; or, in other words, to withdraw in each of those years an equal amount of paper, so as to determine a favorable balance of payments, and cause an importation of specie to that amount. Whatever objections exist to the measure relate solely to its expediency, and not to its practicability. I state these facts to exhibit the real character of the worst alternative you present, — an alternative by no means necessary, — and because I am weary of the absurd nonsense which has been so rife among certain individuals in regard to this subject. Attempting no such change, we, who have recently suffered a fluctuation in our currency of nearly fifty per cent, ought not to be deterred from moderate reforms by the fear of disturbing the level of the precious metals to the extent of an inappreciable fraction of one per cent.

And now as to the assumption that the banks will be destroyed by the disuse of their notes in Government transactions. Although you expressly base this assumption exclusively upon the alleged deficiency of specie, which has been already refuted, with strange inconsistency you elsewhere rest it upon entirely different ground. By an inversion of the relation of cause and effect, the depreciation of paper becomes the cause, and the demand for specie the consequence. And you affirm that the mere fact of the disuse of bank paper by Government will discredit and depreciate it until it becomes "worthless."

Now if the credit of the banks does indeed rest wholly on a vague idea of Government sanction and support, the sooner that "credit perishes," the better. It is a mere illusion, which can produce nothing but mischief. If a connection of the

Government with the banks imparts to them a credit of this character, the fact that it does so is the strongest possible reason against resuming that connection. Let the banks stand upon their own foundation; let them have all the credit to which their conduct and character may entitle them, and no more. It is not a little astonishing to find their especial champions contending that they must forever be propped by Government support — no, not by Government support, but by the false and deceitful appearance of it; and that without the aid of this wretched illusion their paper will become "worthless." If Government encourage such an illusion, it commits a fraud upon the people; and if the banks cannot exist without it, it is high time for them to give place to those which can.

But what evidence is there that the credit of bank-notes rests upon the mere idea that Government receives them? Have not the people far stronger grounds of confidence? Is the judgment of a Treasury officer, without interest in the matter, and perhaps limited in his discretion, to be compared with that of commercial men and competitors? If he discriminate, how are the people to know it? and if not, are they to trust all? Are the resources of the banks, the character and responsibility of their managers, the legal remedies, and the complicated system of securities, — are all these nothing? Is it certain that the credit of the banks with the people rests on no just foundation? that if we withdraw what does not entitle them to confidence they will have no confidence?

But it is idle to argue a question which ample experience has decided. The notes of most of the banks have generally, if not always, been disused by the Government, and no such evil consequences have resulted. I am aware that you have pronounced this assertion to be "wholly untrue," and shall therefore produce the evidence. But first let us have, in your own language, the position which you thus denounce, — "that the notes of but few banks were received in payment of the revenue before the suspension of specie payments."

When the United States Bank was the depository of the

public funds, the bills of the banks situated, and such as were at par at the places where it had branches, were received for public dues at those places. If that institution had accepted bills which were not at par at the points where they were received, it must have suffered a loss of the discount on them; and its own discretion controlled it in the matter. Those which were accepted were speedily collected; but the mass were not received. Under the deposit system the same general custom was enforced, and it finally received a legal sanction. In an Act passed on the 14th of April, 1836, the offer to any public creditor was prohibited of any bank-note "not equivalent to specie at the place where offered, and convertible into gold or silver, upon the spot, at the will of the holder, and without loss or delay to him." Of course those bills only could be received which could be legally used. A Treasury circular was accordingly issued "to the collectors and receivers of the public moneys and the deposit banks," in which the prohibition was recited, and they were directed to conform to it in respect to the character of the funds they should receive. It is well known that the bills of but very few banks were ordinarily bankable or at par at the great commercial points where the revenues principally accrue, and all others were excluded. Before the suspension, the bills of probably less than thirty out of some eight hundred and fifty banks and branches were at par, and consequently receivable for public dues at New York, where a large portion of the revenue is collected. I leave to the reader to decide to whom the charge of falsehood and ignorance, which you prefer against me in reference to this point, is justly applicable.

Finally, the measure proposed cannot cause convertible bank-notes to be depreciated relatively to specie, or create two currencies of different values, — the one of specie, and the other of convertible but depreciated paper, — for the simple reason that it cannot produce a state of things which implies a contradiction in terms. Paper and specie cannot be at the same time of different values and exchangeable at par. Paper

can be depreciated only when it has already become inconvertible. In regard, moreover, to the permanent establishment of such a state of things, there is not the slightest cause of apprehension. The people will never tolerate a permanently irredeemable and degraded currency. They scout the absurd and impious idea that such is their inevitable doom, and they will not suffer man to inflict upon them an evil from which Heaven has spared them amid its severest retributions.

Not satisfied with stigmatizing the character of the measure proposed, you seek to dishonor its parentage. You declare that "it is not a Republican measure," that it was originated by a Whig, and now finds its chief supporter in a Nullifier. I must be permitted to question whether you are qualified, either by disposition or information, to become its biographer. At any rate, I must set you right as to the cardinal point of its history. A measure of the character was certainly introduced into the House of Representatives by General Gordon, a States-Rights Virginian; but where do you think he obtained it? From the works of Thomas Jefferson! And had you been as well acquainted with those works as one who talks so much of Republicanism ought to be, you would have known the fact. Yes, the measure had an illustrious origin and an honest lineage. It now finds itself in company with the mass of the Democracy; and if I may trust the voices which break in on every side, it is in the midst of its kindred. Not a Republican measure, truly! Is it not consonant with Democratic principle? Is it not advocated by the men who enjoy the peculiar confidence of the Democracy, and supported by all their representatives, save only the few doubters? Have you witnessed the enthusiasm, not of the leaders of the people, but of the people themselves? Have you heard the voice of county after county? Not a Republican measure! Have you seen the Message, as it passed from hand to hand, rally the primitive Democratic feeling? Have you marked the clear-headed and stout-hearted yeomanry — the real Democracy — as they read it? If you yet doubt, the people must convince you.

In advocating a separation of the Government from the banks I am actuated by no hostility to those institutions. I believe the measure to be required by an enlightened regard to their interests; and such I know is the opinion of some of our most intelligent practical bankers. The pecuniary advantages of their connection with the Government, which, if the revenue be kept at a proper amount, cannot be large, or enjoyed by more than a twentieth of them, are at best a very doubtful compensation for its unavoidable evils. It has already subjected them to capricious and unwise legislation in the varying contests of parties, which has had no slight agency in breaking up the system; it has, at times, arrayed against them organized parties and powerful interests; and it has involved them, perhaps fatally, in the vortex of politics. He is but a superficial observer of the course of events who thinks that the chief danger has passed. Already are the banks assuming an attitude extremely calculated to force an issue between them and the Government and the people; and they are urged on by politicians ready to organize a commercial and moneyed interest, and by indiscreet friends who exaggerate a trifling question into a question of existence, and present it in a mode little adapted to commend their cause to the people. Even if the question should now be decided in their favor, circumstances will soon occur to agitate it, and make it a prolific source of disturbance. But is there the slightest probability that it can slumber even for a time? Has it not already excited too strong an interest in the public mind, and become too much identified with individual feeling, to be allowed to rest? On what but this and questions inseparably connected with it will the opposition make an issue, and the Administration be forced to rally? I do not believe that the power of men or events can prevent these questions from becoming the test at the elections until they are finally decided. Is it wise, then, for the sake of an advantage, at best very doubtful, to become a party to even a successful political struggle? Is it prudent to exasperate the public mind, already excited? Is

it not utter madness to force a contest which can end only in the final prostration of one party or the other? Of the issue of such contest, should it unfortunately occur, I cannot doubt. The Administration will be sustained by a power which, although staggered for a moment, is never defeated except when it slumbers, — the power of the masses. They are already roused to the question, and no administration, no party, could stay the strong current of their will. The source of the extraordinary influence of the late President was that he truly represented the masses, and they in turn were faithful to him. The unprecedented moral effect of the late Message is attributable not more to its remarkable power than to its sympathy with the great movement of the popular mind. The masses will rally to the support of its principles with an enthusiasm, an energy, and a determination which must ultimately prevail. Partial or transient reverses under commercial or moneyed influence will allure but to betray those who trust them. A struggle such as that to which everything tends, alike fatal to the banks and disastrous to all the business interests of the community, cannot be too much deprecated, and can only be avoided by separating them from the Government. A divorce of business and politics is indispensable to the safety of the one and the purity of the other. It will restore harmony to the complicated relations of society, and will insure protection to the banks in their legitimate sphere and their real interests as institutions of trade.

VII.

SENATOR WRIGHT, of New York, with a view to carry out the recommendations made by President Van Buren in his Message to Congress at the extra session of 1837 and on the 13th day of September in that year, reported what is entitled to be regarded as the great measure of Mr. Van Buren's Administration, "The Independent Treasury Bill." It passed the Senate on the 4th of October, but was laid on the table in the House of Representatives by a vote of 119 to 107. At the regular session of Congress in December following, Mr. Wright again reported his Bill. It passed the Senate on the 26th of March, 1838, but, as before, was laid on the table of the House,—this time by a vote of 106 to 98. The policy of this measure naturally became the absorbing question in the political and financial circles of New York during the succeeding summer and fall. The President and his friends were rendered only the more determined, by the resistance they encountered, to insist upon an entire separation of the Government from the business of banking. Public meetings were held all over the country for the discussion of the measure; and in the choice of candidates for Congress at the fall election, this separation was made the supreme, and by the Democratic party a successful, issue.

At an imposing meeting of the "Democratic Republican Mechanics and Working-men of the City and County of New York," held at Tammany Hall on the 26th of February, 1838, the following address, prepared by Mr. Tilden, was read and unanimously adopted. Its purpose was to justify the policy recommended by the President and embodied in the Bill of Senator Wright.

DIVORCE OF BANK AND STATE.

AN ADDRESS TO THE FARMERS, MECHANICS, AND WORKING-MEN OF THE STATE OF NEW YORK.[1]

FELLOW CITIZENS, — A conflict of principles is now waging which deeply involves our whole social and political system. We invoke your solemn and deliberate attention to those aspects of this great issue which peculiarly concern the class to which you as well as ourselves belong.

An extraordinary concurrence of events has called the people to decide the question of a separation of the financial affairs of the Government from those of private individuals and corporations. Such a separation, considered merely as a measure of public policy, has our cordial and earnest approval. We entertain the firmest conviction that it will increase the safety of the public moneys. Government can provide vaults as strong, and can find officers as trustworthy, as those of banks; it can exact securities as ample, and it can enforce an accountability to itself more direct, immediate, and effective. In a change of system the loss of the corporate responsibility of banking companies is more than compensated by an exemption from the hazards of their business operations. A system which prohibits the use of the public moneys is less exposed to defalcation than one which, allowing their use, can be secure only in their successful employment. A system which relies on fidelity to public trust is safer than one which relies on mere pecuniary responsibility. Men are less ready to commit a felony than to incur a debt.

Such are the deductions of reason; let us test them by

[1] Adopted at a public meeting held at Tammany Hall Feb. 26, 1838.

experience. For fifty years our mint establishment has been conducted on this system; and although it has generally involved the custody of as large an amount as need be deposited in any one sub-treasury, not a single dollar has ever been lost. Fellow citizens, we appeal to your common sense. Tell us, are their own officers less worthy of the confidence of the people than the agents of banks? Cannot the Government, regulating the public funds with sole reference to security, make them as safe as banks wielding them for the purposes of gain? And what is the character of the argument by which these common-sense views of the subject are opposed? Exaggerated accounts of official peculations are paraded before the public view; and for what? As arguments in favor of the system under which they occurred, and against a system under which they did not occur! In a time of peace, and with a large surplus revenue, the financial operations of the Government are suddenly suspended; an extraordinary convocation of Congress is rendered necessary; the Government, unable to command a dollar of its own resources, is compelled to borrow money to meet its current expenses. Under such circumstances it is that the delinquent depositories of your revenue tell you that your future collections will not be safe, locked in your own vaults, and guarded by your own officers, but must be intrusted to them to be loaned out to traders and speculators! We will not argue so plain a case.

Loud outcries are raised against the system as expensive. It is a sufficient answer to such allegations to state the fact that the whole annual expense contemplated by the Bill now before Congress is but a fraction more than one mill to each person in the nation. And would it be a wise economy, in order to save the petty expense of a strong box, to place the public funds where, if not eventually lost, they cannot be commanded at will? Recollect that the recent extra session of Congress, which was rendered necessary solely by the failure of the public depositories, cost the nation more than the whole expense of an independent treasury system for ten years.

The system, instead of increasing, as its opponents allege, will greatly diminish executive influence. The whole extent of the patronage which it confers is the appointment of four officers, and the employment of from six to twelve clerks. Under the old system, from twenty-five to ninety banks, with their hosts of dependents, held the same relation to the Executive, and they were allowed to derive great emolument from the use of the public moneys. The competition which was thus excited between multitudes of powerful moneyed institutions to preserve or to obtain exclusive favor, could not but greatly enlarge executive influence. The strength of the temptation, and its tendency to induce a resort to questionable means, may be estimated from the fact that the late National Bank, in order to force a restoration of the public deposits, waged a ruthless warfare upon the Government and all the business interests of the country, and that we are now threatened with a similar crusade from the State institutions.

The system will operate on the local banks less harshly than a national institution. While it will impose on them a restraint more certainly and invariably salutary, it will not subject them to an unequal competition in their legitimate business. It will enable the Government always to preserve its faith with the public creditors, and to control its own resources in every emergency. It will dissolve an unnatural connection which has exposed politics to influences most corrupt and combinations most dangerous, and which has involved business in the strifes of party, and spread uncertainty, confusion, and disorder through all its relations. It will exert a highly beneficial influence on the currency, and, through it, on all kinds of business. The public balances invariably expand with an excitement in banking and trade, and contract with a revulsion. If they are employed in business, their fluctuations cause the ordinary financial action of Government to urge to both extremes the natural vibrations of trade, and to aggravate the evils which they inflict on the community.

But under this system the increase of the public balances,

which is the first effect of an excitement in business, would create a specie demand on the banks restraining their issues and allaying commercial excitement, while the decrease of them, which occurs in a revulsion, would throw the previous accumulations of specie into active circulation, and mitigate the severity of the reaction. Thus would the ordinary and legitimate operations of the Government exert upon banking and trade a greater sanative power than any system of artificial regulations.

Such is the character of the measure, and such are some of the practical benefits which it will produce. But it derives an infinitely greater consequence from the principle which it involves of a separation of bank and State.

The history of every nation which has enjoyed any portion of freedom is a record of the incessant struggles of the few to establish dominion over the many. In the earlier ages and among the less enlightened nations the spirit of aristocracy maintained its ascendency by brute force or through superstition. As mankind advanced in intelligence and political information, it assumed a form more adapted to the character of the age. Banding together the rich by the strong ligament of mutual interest; arraying them in an organized class which acts in phalanx and operates through all the ramifications in society; concentrating property by monopolies and perpetuities, and binding to it political power,—it has established an aristocracy more potent, more permanent, and more oppressive than any other which has ever existed. Such is the dynasty of associated and privileged wealth, which at this moment is practically the ruling power in nearly every civilized nation.

The effect on human happiness of the union of moneyed and political power is not a matter of conjecture. The condition of the industrial masses in those countries in which it exists is a living commentary on the system. In France, the suffrage for that branch of the government which pretends to be popular is limited by a property qualification so high as to exclude all but the richest one of every two hundred individuals. A

natural result of legislation so controlled is that of a population of thirty-two millions, seven and a half are forced to live on twenty dollars, and twenty-three millions on less than thirty dollars a year each; while all the rest of the products of their incessant and severe toil goes to enrich the privileged few.

England also has based government on property. Even the popular branch of her legislature is wholly controlled by the moneyed interest. The wealthy few alone are eligible to the House of Commons, or possess the elective franchise; and the inequalities in the representations, and the influence of mighty combinations of money in the elections, render the supremacy of wealth complete and absolute. The capitalists and landed proprietors wield the whole political power of the State for their own benefit. Property is kept in large masses in the hands of the few by the law of primogeniture and the system of entails. Monopolies overspread the land, paralyzing individual effort and exhausting the life-blood of the body politic. The burden of the gigantic machinery of State, the Church establishment, the pauper system, and the national debt, crushes the laboring classes, on whom exclusively it is made to fall. In fine, all the institutions of the country and the whole course of her legislation tend to transfer the property of the many to the few; and the results are, on the one hand, individuals with annual incomes of a million, and on the other the mass of the people receiving only the most scanty and miserable subsistence, and a fifteenth of them supported by public charity.

A tendency to a union of political and moneyed power can be distinctly recognized in the politics of this country. It has characterized the entire policy of one of the great parties which have divided the Republic from its foundation. In the convention which formed our present Constitution, this party endeavored to give to our Government an aristocratic bias. Failing to accomplish its object directly, it naturally sought to impress that character upon the practical administration of the government. Its leader, Alexander Hamilton, who had advocated in the convention a President and a Senate for life, originated a

funding system and a national bank. The obvious tendency of a public debt to array the rich, whose property is invested in it, in support of the Government, was the origin of the Federal heresy that "a national debt is a national blessing;" and a mammoth bank was a nucleus around which to concentrate and consolidate the money power, and an appropriate engine to wield its influence.

At a subsequent period the same party sought to limit the elective franchise by a property qualification, thus directly surrendering the political power of the State to the control of wealth. And still more recently it was found sustaining a great monopoly, fatally hostile to the genius of our institutions and the true policy of our legislation. A powerful moneyed corporation, engaged in a death-struggle with the Government to which it owed its existence, assailed the purity of our Press, the fidelity of our representatives, and the freedom of our elections, and by its control over the currency, spread far and wide dismay, misery, and ruin, in order to extort a renewal of its powers and privileges from the fears and necessities of the community. The patriotic firmness of a virtuous people prevailed in the struggle; but the signs of the times admonish us that we are now about to re-enter the same contest. A mighty combination of political factions and moneyed interests is again in the field to control the elections, to change the administration of the government, and to re-establish the supremacy of a great moneyed corporation over the currency and business of the country.

Is any one deluded by the vain pretence that the present conflict of parties does not involve the question of a national bank? All the leaders of the opposition and all their presses assert that our pecuniary difficulties can be relieved only by such an institution. Are they not thus pledged to exert for its establishment whatever political power they attain? Has not Daniel Webster declared his determination to bring forward the measure? And Henry Clay proclaimed it in the Senate House as an alternative to revolution! And is it not avowedly

postponed solely because it cannot now succeed? We appeal to every man in the nation. Is there one who doubts that if the opposition succeed in gaining an ascendency in the government, they will create a national bank? Fellow citizens, the real issue now presented to you is a separation of the Government from all banks or the re-establishment of a national bank.

Assiduous efforts are making to terrify the public mind with apprehensions of social disorder, to represent the great measure of reform which is now presented to you as "disorganizing," and to stigmatize its supporters as "destructives" and "agrarians." We who now address you have been the peculiar objects of these imputations; we pause, therefore, for a moment to repel them. We entertain no sentiments adverse to social order. We seek not to destroy, but to preserve in their purity the institutions of our country. We are not hostile to trade, or its legitimate operations, or its necessary institutions. We desire to introduce into banking the great principle of equal liberty, which, applied to business, has in every instance produced the most beneficent results. We seek to arrest a system of monopoly, special legislation, and governmental interference as disastrous to business, as its tendency is fatal to our whole social and political fabric. We do not assail property, we merely deny to it political power. We excite no prejudice against wealth, we merely refuse to it exclusive privileges, either in business or in politics. We claim an equality, not of social conditions, but of political rights. Our motto is equal protection to all, special favors to none. These are our sentiments. They accord with the immutable principles of rectitude. We rely for their support on the intelligent judgment of our countrymen.

Nor has our country any reason to fear social disorder. Anarchy is but a state of transition; it cannot exist as a permanent condition of things. The very nature of man renders social order inevitable. Even temporary confusion can occur only as a consequence of a previous infringement of the true

principles of society. All the laws of Nature harmonize, and it is only when some of them are violated that convulsion ensues. If human regulations did not produce artificial and unjust distributions of property, a state of things could never exist in which property would be endangered. Where the avaricious few have so controlled legislation as to concentrate and perpetuate property in themselves, it is natural that they should seek to exclude from political power all who have no "stake in society," and that they should regard the plundered masses as hostile to such "rights of property" and such a "social order." It is natural that they should distrust all whose sense of justice is not subdued by a participation in the spoil, and that they should tremble for their iniquitous possessions and the system which upholds them. But where society is constructed on just principles, such apprehensions are visionary and absurd. Convulsion is the struggle of Nature with disease in the body politic, and can never occur when the system is in health. Human experience has not presented a solitary exception to these principles. The masses never were prone to disorder. All history repels the calumny. Still more absurd is it to suppose them disloyal to our peculiar institutions. Our social system is the only one which has ever secured their rights, and cannot be changed except at their expense. In European society the few hold the State; in ours, the many.

The real danger to which our institutions are exposed is in the abandonment of the principles on which they are founded. And we ask if a strong tendency of this character has not developed itself in our politics? Has not the whole course of an influential party aimed at a union of political with moneyed power? Has not that party sought to confine the elective franchise to the rich? Has not one of its great leaders declared that "Government ought to be founded on property"? Has it not at a general meeting in this city proclaimed that "the possession of property is the proof of merit"? Has it not attempted virtually to rob the working classes of the right of suffrage, by driving them from employment unless they would

surrender this dearest birthright of freemen to the dictation of those who, by means of their wealth, possess an accidental power over them? And is it not now struggling to enthrone a great moneyed monopoly in absolute dominion over the currency and business of the country? Ask yourselves, fellow citizens, if the establishment of such a supremacy be not a giant stride in a career fatal to our institutions! And if you yield to this encroachment, where will you pause? Resist, then, upon the threshold the attempt to depart from the principles on which our political system is founded. Adhere to that basis, and it can never be endangered.[1]

[1] At a previous meeting of the mechanics and working-men of the city of New York, held on Feb. 6, 1838, the Resolutions — also prepared by Mr. Tilden — declared in favor of free banking. This was in advance of any general banking law in any State of the Union. The monopoly system prevailed everywhere. The declaration was in the following terms: —

"*Resolved*, That we require in banking, no more than in government, a monarch and a privileged nobility to regulate our affairs; that an application to finance of the principle of equal liberty, so long successfully applied by the American people to politics, is imperatively required, — a liberty, not of unlimited license, which, possessed by one individual, would destroy the liberty of every other, but of a character which, under general equal laws, extends the largest measure of freedom and enforces the most perfect security to the rights of all; that if abuses in banking, more than in any other business, affect those who do not participate in them, the remedy is not in a wider license to a limited number of individuals, but in a more effectual restraint upon all, not in exempting banking from the competition and personal responsibility which alone prevent intolerable abuses in other kinds of business, but in giving greater practical efficiency to these natural restraints and in exacting additional securities.

"*Resolved*, That a general banking law, constructed on these obvious principles, ought to be enacted. It will close up the most fruitful source of legislative intrigue and corruption; it will prevent the frauds and favoritism practised in the distribution of stock; it will remove a monopoly which, to the amount of the extra profit it confers, levies an indirect tax upon the unprivileged mass for the benefit of a few, uncompensated by any public advantage; it will put an end to arbitrary and unnatural distributions of banking capital; and it will alleviate those fluctuations in the currency which subvert contracts, cause a general insecurity of property, render uncertain the wages of labor, and convert the pursuits of regular industry into a pernicious species of gambling."

VIII.

About the year 1770 a society was formed in England, now known by the popular name of "Shakers," an offshoot of the Society of Friends. In 1774 ten of the more prominent members of the Society, including one Ann Lee, who claimed to be specially inspired, came to New York. Eight of these, including Ann Lee, settled at Watervliet, about seven miles from Albany In 1779 a religious "revival" was experienced at New Lebanon, in Columbia County, accompanied with some strange psychical manifestations which suggested the propriety of going to Watervliet and consulting "Mother Ann," as Ann Lee was accustomed to be called; and with her they fancied they found the key to their peculiar religious experiences. About ten years later, one Joseph Meacham, who had been a Baptist minister, and was one of Mother Ann's converts, collected some of her adherents at New Lebanon, in Columbia County, and there organized the first society of Shakers in the United States.

In the year 1837 the spiritualistic feature of their faith received a marvellous impulse, — a feature which lasted several years, and which seemed to be akin to those manifestations and rappings which constitute one of the features of modern Spiritualism. During this season of religious enthusiasm the Society applied to the Legislature of New York for a law exempting it from the operation of the general law relating to trusts. The objections to this Bill were deemed of sufficient gravity by Mr. Tilden, who is a native of New Lebanon, to be carefully studied and set forth in a pamphlet, which was published at Albany in 1839, and furnishes a curious chapter in the history of that extraordinary sect.

CONSIDERATIONS IN REGARD TO THE APPLICATION OF THE SHAKERS FOR CERTAIN SPECIAL PRIVILEGES.

THE trustees and deacons of the Society of Shakers have petitioned the Legislature to exempt them from the operation of the general laws of this State relative to trusts. This application involves principles of such high importance that it deserves an attentive examination.

An act such as is applied for would violate the equal rights of the rest of the community, without the pretence of a public object, by which alone a defence of such a violation is ever attempted. The Shaker Society is either a business association or a religious association; and there is no reason why, in either case, it should be exempt from the laws of the State to which every other association of a similar character is subject. If those laws are unwise or unjust, they should be repealed; if they are imperfect or partial in their operation, they should be modified: but whatever they be, they should apply alike to all classes of citizens. The inequality of the act sought is not merely theoretical or unessential, it is of the very highest practical consequence. Regarded as a business association, the society which should enjoy the benefit of this inequality would be a perfect anomaly. No similar association can exist under our general laws, and no such has ever been created by special charter. It would possess all the essential characteristics of a corporation, without one of the limitations as to the nature, extent, or duration of its powers, and without one of the guards against abuses, which have been imposed with jealous rigor upon all incorporations. But it is unnecessary to extend this view of the subject, since it is solely as a religious association that the Shaker Society claims such extraordinary privileges. Regarding it in that character, these privileges are not

less unprecedented or objectionable. They are such as have never been conferred upon any other religious society. The wide disparity between them and those possessed by other religious societies will be sufficiently illustrated by a comparison of a few provisions of the general law of religious corporations with the effect of the act applied for. That law restricts the property to be held by religious societies to what shall be necessary to strictly religious uses, and limits its amount to a specific sum. This act would enable this Society to hold in perpetuity the aggregate of the individual property of all its members, and to an unlimited amount.[1] The general law defines the powers and duties of the trustees, who control the corporate property of such societies, makes them elective, limits their term of office, prescribes the qualifications of electors and the mode of elections, and, in fine, makes minute and careful provision that the affairs of those societies shall be administered according to the will of their members fairly and frequently expressed, thus conforming them to the character of the political institutions of our country. This act would enable this Society, with more extensive powers, to be conducted without regard to one of these provisions, and that when its entire organization and practice are contrary to all of these provisions.

The act applied for would be inconsistent with the general laws which regulate the descent of property. It involves the odious principle of entailment, which it was one of the first acts of our national independence to abolish as incompatible with institutions of freedom. So sensible have we been of the inconsistency of mortmain establishments with our political system; of their tendency to produce dangerous accumulations and mischievous inequalities of property, and of their paralyzing influence upon the general interests of society, — that it has been the policy of our legislation, as far as possible, to extirpate the principle itself. Permanent trusts and entails are but different forms of this principle; and the abolition of both was prompted by the same motives and enacted in nearly the same language.

[1] See Note A, p. 97.

The Shakers claim that an exception shall be made to this policy in their favor. They ask to be allowed to constitute a perpetuity, not only of what may be necessary to the maintenance of their peculiar worship, but of the aggregate property of all their members. This property is avowedly held for their benefit, and is, in fact, applied to their use, in the same manner as private property is ordinarily applied to the use of its owners. All that distinguishes it from the mass of private property is that it is held in common and its application made by a common authority. The act applied for, then, is analogous, not to a power of holding property for religious purposes, granted to religious corporations, or a power of holding it for a specific object of public utility, sometimes conferred by special charter, but to an entailment of private property. Such, indeed, is its precise practical effect.

Ought such a power to be granted to any class of men? If conceded to this class, how can it be withheld from any other class who may desire to hold their property, or any part of it, for any religious purpose, or for any proper purpose, collectively? Or why should it be withheld from individuals? To grant what the Shakers ask by a general law, conferring the same privileges on all classes and individuals, would be to re-establish the exploded system of entailment.

The act applied for would have an *ex post facto* operation in a case extensively affecting private rights. Under existing laws, all persons who were members of this Society when the trust terminated have a legal estate in the common property; and of this legal right the act applied for would divest them. Such an act would be repugnant to the provision of the Constitution of the United States which declares that "no State shall pass any *ex post facto* law." It would violate private rights, and trample upon the clearest dictates of natural justice.

When a similar bill was before the Senate last winter, Mr. Verplanck proposed an amendment which provided that the act should not apply to property acquired by the Society since the time when the law abolishing trusts went into effect. This amendment does not remove the objection to the act. Take a

parallel case. Suppose an application were made to the Legislature to restore to individuals the property they would have possessed under entails which have been broken up. Will it be pretended that such an act would be within the constitutional competency of the Legislature? And if such an act were opposed on the ground of its retroactive operation and its violation of private rights, would it be a sufficient answer to say that it but restored what had once existed and had been abolished by law?

If any principles can be said to be absolutely vital to our free institutions, they are the maintenance of an equality of rights, a hostility to entailments and mortmains, and an abstinence from *ex post facto* legislation. All of these cardinal principles the act applied for would violate.

It remains briefly to notice the arguments by which the Shakers enforce their application. They speak of "an equality of political and religious rights" as "the foundation and corner-stone of the whole edifice" of our Republic, and say: —

"As we solicit no special aid or favor from Government in our behalf, so we deprecate any special or peculiar operation of its laws to the destruction of our communities and the prevention of our enjoyment of our own mode of religious faith and worship."

The principle of an equality of religious rights, to which they appeal, is certainly sound; but it cannot easily be reconciled with the substance of their petition. They do not seek relief from any special legislation against them, but ask for special legislation excepting them from the operation of general laws of the State. True, they complain of a "special and peculiar operation" of the general laws upon them; but that is only because they seek to engraft upon their Society features which are repugnant to the general laws, and which are denied to all individuals and associations of every character. Any other individual or association which should seek to assume the same powers, or should attempt anything else prohibited by statute, would doubtless find a "special and peculiar operation" of the general laws against them also. Nor does it alter the case that before these general laws were passed they enjoyed the privi-

leges which they now seek to revive. Every trust which was terminated, and which it was the very purpose of those laws to terminate, could allege the same; and every entail which has been abolished, and, indeed, every vicious institution which it has been found necessary to prohibit, could claim a revival on the same principle.

But they affirm — and this argument runs through their petition, and is the one on which they rest their application — that the special legislation which they ask is necessary to the preservation of their "rights of conscience" and the "enjoyment of their own mode of religious faith and worship."

But why, it may be asked, do they not avail themselves of the general law incorporating religious societies; or if that, which is sufficient for every other religious society, be insufficient for them, ask directly for a special incorporation? They allege that their faith will allow them to do neither, because they "cannot receive the forms or principles of their institutions from civil government, and can have no connection with it, further than to obey its laws and enjoy the common protection it extends to all."

Their faith makes nice distinctions. It will not allow them to incorporate themselves under existing laws, or to ask a special act of incorporation; but it will allow them to ask a special act, exempting them from the operation of the general law, in such manner as practically to accomplish all and more than would be conferred by a special act of incorporation. It is easy to point out far more substantial reasons than the reason assigned for the course they prefer to take. In the first place, they seek to invest their Society with powers and privileges which are conferred on no business or religious corporation by any law, general or special, and which it is not likely that the Legislature, after a direct consideration, would grant. In the second place, corporations with even much less extensive powers are surrounded by guards against abuses and provisions regulating the appointment, defining the powers and duties of their officers, and enforcing their responsibility to the members, — all of which are inconsistent with the arbi-

trary organization and usages of this Society, which it is sought to confirm and perpetuate by law.

But whatever motive prompts the form of their application, the plea by which the application itself is sustained is wholly insufficient. The idea that a denial of it would infringe their rights of conscience or interfere with the enjoyment of their own mode of religious faith and worship is absurd. If an individual should make it a matter of faith to entail his private property on such of his descendants as should adhere to his doctrines, would the Legislature be bound to pass a special act for the purpose? or would a refusal to do so violate his rights of conscience? Or if a sect should spring up, the members of which should wish to hold their private property jointly, must it therefore be converted into a mortmain? or if not, are they denied "the enjoyment of their mode of faith and worship?"

According to this mode of reasoning, whatever a man may make, or pretend to make, a matter of religious belief must be confirmed and established by law, however repugnant to the general law, however violative of the equal rights of other citizens, however inconsistent with the fundamental principles of our political system!

Nor is there any hardship in the operation of the existing general laws upon the individual members of this society. If those laws make it optional with them to continue or not themselves and their property in the association, there surely is no hardship in such a state of things. Equity certainly does not require a special interference of the legislative authority to compel any of them to continue, against their will, their connection with the Society, or to exact from those who do not choose to do so, a forfeiture of their share of the property.

And in regard to the future operation of existing laws, the whole practical effect of the legislation sought is to deprive, to more or less extent, the members of the Society, individually or collectively, of their control of its affairs and of the power of withdrawing with their share of the property from the association. The danger of individual injury is far less from the existing general law than from the change proposed. The

general law relating to this subject cannot, on the whole, be supposed to operate injuriously to individual rights. In everything in which it differs from the act proposed it is calculated to protect those rights. On the other hand, the act proposed confers powers which, possessed by any society, are extremely liable to abuse, and capable of working great individual injustice. If the government of the Society which possesses these powers be of the most arbitrary kind, its trustees under the absolute control of an irresponsible ministry, who hold their offices for life and appoint their successors; if its internal police extends to the supervision and control of the minutest personal concerns; if its fundamental law is an unqualified submission of its members to their irresponsible rulers; and if the penalty with which those rulers are armed is a forfeiture of all he possesses by any member who shall be ejected from or shall leave the association,[1] — can it be that a society so constructed and possessing such powers shall not frequently work great individual wrong and oppression? May not individuals, from a change of opinion or from any other reasonable cause, wish to leave the Society, and be denied equitable compensation for their services — perhaps of many years — or for the property they contributed? May not individuals who have become obnoxious to influential persons be compelled so to leave?

It is not sufficient to say that these individuals joined the Society voluntarily; even in that case the Legislature ought not to interfere to deprive them of the opportunity they might have, under the general laws, of escaping from the consequences of error, rashness, or delusion of judgment. And, moreover, it may be frequently the case that the members of the Society, carried there during their minority, and educated in entire ignorance of the world, have had no real freedom of choice.

A slight knowledge of human history and of human nature is sufficient to show that the grossest abuses and the most outrageous individual wrong and oppression always have resulted, and always must result, from such institutions as this Bill, against the spirit of the general law, creates and perpetuates.

And experience in the very case in question concurs with all other experience.

Instances in which individuals who have wished, or have been forced to leave, have been denied compensation for long and valuable services, and for property contributed to the Society, are of frequent occurrence; and it is this hard alternative which keeps many in a servitude which, in its abjectness and its minute rigor, has a parallel in no institution which has ever existed among mankind.

The trustees alleged to the committee of the Senate last winter that they do make compensation to those who leave them for their services and property, and exhibited a covenant which contained a provision for that purpose. Another covenant was produced and proved by the remonstrants, which expressly cut off those who leave from a claim of this kind, and from claims of every description against the Society. The trustees sought to cover the artifice by which they had attempted to deceive the committee by saying that "this was the covenant of another family." The truth was, that the one which they exhibited to the committee was only an *initiatory* covenant, which is signed, in some cases, by the members before they are "received into full union," while all the covenants subsisting between the actual members are of the other character. This conduct of the trustees must be regarded as an admission that a compensation to members who leave is equitable. If they are disposed to make it, they ought not to ask, and if they are not disposed to make it, the Legislature certainly ought not to grant, a special act depriving such members of the only legal means they have of enforcing their acknowledged right.

There is no just cause for legislative interference in this matter. Whatever property is requisite to maintain the worship of this Society they can hold by the law of religious incorporations, which is more than adequate to every such necessity. Their private property they can hold as other individuals do; and if they wish to associate it, they can do so under the same laws, with the same conditions, under which other individuals

can associate. What more can they properly ask? What more can be properly granted to them?

The act applied for does not stop here; it makes a most important discrimination in favor of this sect over all others. It offers encouragement by law for the perpetuation and extension of this Society, by conferring upon it special privileges of an extraordinary character, and by in effect compelling its members to continue in the association under penalty of a forfeiture of their property. It offers this encouragement — which could be properly offered to no sect, however meritorious — to a Society whose principles would uproot our whole social system, whose practice — "destroying," as their creed inculcates, "natural affection," and breaking up the relations of parent and child, husband and wife — is in perpetual conflict with the social duties which the civil law recognizes and enforces, and whose organization is an unmixed and unmitigated despotism. The nature of this association is not alleged as a reason for refusing to its members the privileges which equal laws confer on all, but it is a sufficient reason for denying to them more. Under the broad shield of an equality of rights, error may claim protection, but it cannot claim special privileges.

The character of this act as a public measure has been already sufficiently discussed. It has been shown to be, in every aspect, inconsistent with the fundamental principles of our political institutions.

NOTE A.

THE Bill, which was drawn by the counsel of the trustees, and presented to the Legislature at the last session, affected to adopt a limitation as to the amount of property to be held by the Society, analogous to that imposed by the acts incorporating other religious societies. It provided that no society should hold property, "the whole clear annual income of which shall exceed five thousand dollars." The word "clear" is found in no similar statute; and for what purpose it was introduced here is inconceivable, unless it were to allow this Society to hold property which should produce an income of that amount beyond all expenditures. The law incorporating religious societies restricts the whole amount of prop-

erty which they may hold, either for use, or to defray with its income their expenses. This Bill restricts neither the extent nor the character of the expenditures of this Society, but only the surplus of its revenues. Such a limitation is perfectly nugatory.

Nor is this all. The Society at Lebanon, for instance, is subdivided into several "families," which are understood to hold their property in common and by the same general trustees; but if each family, as seems to be intended, be considered as a distinct society, by multiplying their number the amount of property which the whole Society can legally hold may be increased indefinitely.

Mr. Verplanck appears to have perceived and endeavored to obviate this objection by an amendment which provided that no person should be a trustee or a member of more than one society. He was not sufficiently acquainted with the nature of this association to be aware that his amendment was ineffectual to his object. The trustees of all the families are under the control of, and removable by, a single ministry, which concentrates and wields the aggregate power and property; and whatever nominal divisions exist can only render nugatory such restrictions as were proposed by Mr. Verplanck, without lessening the practical evil which they were intended to prevent.

NOTE B.

THE supreme power of the Society resides in a "ministry," composed of four persons,— two male and two female,— one of whom is absolute, and the others mere counselling subordinates. The "first in the ministry," as he is termed, holds his office for life, and designates his successor,— a mode of appointment introduced by Ann Lee, the founder of the Society, and continued ever since.

The other principal officers are, in each "family," or branch of the Society, an "elder," who has sole charge of all its spiritual, and supervision of all its temporal affairs; two "deacons," — one superior and one subordinate,— who have, under the supervision of the elder, charge of all temporal matters; with corresponding female officers of inferior authority.

These and all the other officers of the Society hold their places during the pleasure of the "ministry."

The cardinal doctrine of the Society is that all the "orders" and "gifts," as their standing and special regulations are termed, emanating from the "ministry," are direct "revelations" from Heaven to the "ministry." Implicit obedience to these "orders" and "gifts" is, therefore, a part of their religious faith, and its obligation is enforced by an express agreement in their written "covenant."

Confessions are required, at very short intervals, of the members of the Society to the "elders," and through them to the "ministry," and they are rendered more effective by the pretence of supernatural information on the part of the confessors as to the conduct of the members, which their organization gives them ample means of maintaining.

The slightest dissent of a member from any order or act or proposition of the elders throws him at once "out of union," and subjects him to religious discipline. The frequent confessionals and the efficient system of espionage kept up through the "elder" resident in each family, who makes all the members of the family in practice spies upon each other, inform the "ministry," with incredible celerity, accuracy, and certainty, and enable it effectually to prevent interchange of sentiment or concert of action between the dissatisfied, and to crush the first risings of discontent.

Refractory members are subjected to a code of "purging gifts," which soon results in their secession, — such as requiring them to eat alone, and forbidding them to speak to any other member, or any other member to them, etc.

Members who leave are cut off by the "covenant" from any claim for property contributed and services rendered, and from demands of every description against the Society.

Extracts from the "covenant" and a few of their standing "orders" are subjoined. These were proved before the committee of the Senate at the last session; the other facts are derived from the "Testimony of Christ's Second Appearing," the "Millennial Church," and other works of the Society, and the publications of Hasket and other seceders.

THE COVENANT.

ARTICLE III. — We further covenant and agree as aforesaid to receive and acknowledge our faithful elders in the gospel who have been or shall hereafter be chosen and appointed to the office by the ministry in the manner aforesaid; and we do solemnly proclaim, in the presence of God and each other, that we will, as faithful brethren and sisters in Christ, conform ourselves to the orders, rules, and regulations which have been or may be hereafter granted and established by regular authority in our said family.

ARTICLE VIII. — Therefore we do, by virtue of this covenant, solemnly and conscientiously, jointly and individually, for ourselves, our heirs and assigns, promise and declare, in the presence of God and each other, and to all men, that we will never hereafter, neither directly nor indirectly, make nor require any account of any interest, property, labor, or service which has been or may be devoted by us or any of us to the purposes aforesaid, nor bring any charge of debt or damage, nor hold any demand whatever,

against the said family or society, nor against any member thereof, on account of any property or service given, rendered, devoted, or consecrated to the foresaid sacred and charitable purposes.

ORDERS.

It is —

Contrary to order for any one to write the orders.

Contrary to order to inquire into the orders of other families.

Contrary to order to inquire into any bargain that the deacons have made.

Contrary to order to open your mind out of the line of order.[1]

Contrary to order to expose counsel or tell what the elders say.

Contrary to order to go to meeting with sin unconfessed.

Contrary to order to receive or write a letter without the elders' perusal of it.

Contrary to order to take a book without liberty.

Contrary to order to go out among the world or among other families without permission of the elders.

Contrary to order to have any money privately.

The preceding "orders" illustrate the nature of the organization of the Society; the following — frivolous and absurd as many of them are — illustrate the slavish minuteness of the supervision and control to which the members are subjected: —

Contrary to order to shake hands with a world's woman without confessing it.

Contrary to order to shake hands with the world, unless they first tender the hand.

Contrary to order to play with dogs or cats.

Contrary to order for a brother and sister to ride together in a wagon without company.

Contrary to order for a brother and sister to pass each other on the stairs.

Contrary to order for a person to go out of the door-yard after evening meeting.

Contrary to order to have right and left shoes.

Contrary to order to pare the heels of the shoes under.

Contrary to order to read newspapers in the dwelling-houses at any time, unless indulgence for that purpose is granted by the elders.

Contrary to order to fold the left thumb over the right in prayer, or when standing up in worship.

Contrary to order to kneel with the left knee first.

Contrary to order to put the left boot or shoe on first.

Contrary to order to kneel with handkerchief in hand.

Contrary to order to put the left foot on the stairs first, when ascending.

[1] To "open your mind" is to express your grievances or confess your sins. "The line of order" is the elders of the family.

IX.

THE preliminary canvass for the Presidency in 1840 began unusually early. The Independent Treasury Act, the most conspicuous feature of Mr. Van Buren's Administration, became law on the 30th of June, 1840. The Whigs nominated General William H. Harrison as early as the 4th of December, 1839. Mr. Van Buren had no serious competitor for the nomination from the Democratic National Convention. The financial distress which naturally and inevitably followed the sudden check given to the crazy system of credits under the National Bank *régime* was all ascribed to Mr. Van Buren, and the necessity of a change of Administration to restore prosperity to the country was pressed on the attention of the public by the most eminent orators of the opposition, at monster meetings rendered attractive by devices till then unknown in American politics. Among the points made with most effect against the financial policy of the Administration was its alleged responsibility for the stagnation of trade and low wages. As this was a consideration likely to have most weight with the industrial, which to a large extent constitutes the voting, class of the country, Mr. Tilden, with his constitutional propensity always to do the most important thing first, "met the enemy in the gates," and on the 3d of October, a few weeks before the day of election, answered those imputations in a speech delivered to his neighbors of New Lebanon. It attracted much attention from thoughtful men addicted to the study of finance, banking, and political economy. Condy Raguet, who had been the author of several works upon these subjects, and who was the most prominent member of a club of political economists in Philadelphia, wrote to William C. Bryant & Co. asking for the address of Mr. Tilden, and saying, "I wish a copy of this

most masterly production to send to a friend in England who knows how to appreciate the truths of political economy." Commendations equally strong were accorded to it by William M. Gouge, author of "A History of Banking in the United States;" by Henry Lee, of Boston, who had become so distinguished by his economical writings that South Carolina cast her electoral vote for him for Vice-President in 1832; and by others.

This speech, like other early writings of its author, is somewhat tinged by the ideas on the currency which had become prevalent in English economic literature ever since the admired discussions of Ricardo and the famous "Bullion Report." But even in them the germs will be found of the better thought of Thomas Tooke, William Fullerton, and James Wilson. These germs were afterward matured by Mr. Tilden; and the true theory is expounded with more accuracy, as well as with more practical wisdom, in his Annual Messages as Governor of New York in 1875 and 1876, than elsewhere, so far as I know, in any language.

CURRENCY, PRICES, AND WAGES. — THE PRETENSIONS OF THE UNITED STATES BANK TO REGULATE THE CURRENCY EXPOSED.

FELLOW CITIZENS, — On the frequent occasions on which I have had the pleasure of meeting you during the last three years I have so fully discussed the great political and financial questions now before the country that I shall confine myself this evening to a consideration of the influence of the two great systems of policy advocated by the parties which divide the community upon Prices and Wages. But before entering upon the main subject I shall examine the causes of the fluctuation in prices which we have recently experienced.

Causes of the recent fluctuation in prices.

The first and chief cause is a fluctuation in the currency. The price of an article is the amount of money for which it will exchange. If with the same articles in the market the amount of money to purchase them be increased, they will exchange for more money, — in other words, their prices will rise; or if the amount of money be decreased, they will be exchanged for less money, — in other words, their prices will fall. I do not mean that the price of each article will vary just according to variations in the amount of money; for circumstances will always exist peculiar to particular articles or classes of articles to make them rise and fall more or less than the average. But in regard to the mass of articles taken together, the principle is not only obviously true, but is also verified by all experience. I have prepared a table to illustrate the operation of this principle in the recent fluctuation in prices. It contains the gross circulation of all the banks in the United States — which does not

materially differ from the whole amount of the currency, except that it does not show the full extent of the contraction — on Jan. 1, 1835, when the expansion of the currency and the rise of prices had just begun, and on January 1st of each year since in comparison with the prices of the principal agricultural products in the city of New York at the same periods.

TABLE

Of the gross circulation of all the banks in the United States, and of the prices of agricultural products in the city of New York, in January of each year.

Years, Jan.	Bank circulation, Dollars.	Flour, bbl.	Wheat, bush.	Corn, bush.	Rye, bush.	Oats, bush.	Beef, bbl.	Pork, bbl.	Cotton, lb.
1835	103,700,000	5 56	1 00	74	75	40	9 25	14 12	17
1836	140,300,000	7 60	1 45	90	1 13	62	9 75	18 25	16
1837	149,185,000	10 87	2 06	1 07	1 20	67	13 00	23 25	18
1838	116,138,000	8 75	1 95	84	1 15	52	14 12	21 50	11
1839	135,170,000	9 00	1 75	92	1 15	62	15 87	23 25	14
1840	106,968,000	6 00	1 18	75	67	36	12 25	14 25	10

Prices were lower a few months before January, 1835, the first date; higher in March, 1837, flour rising to twelve dollars, just after the date when the expansion was the greatest; and are lower since January, 1840, the last date, the bank contraction having still continued: but I have taken a uniform date throughout the statement. Agricultural products do not vary as exactly with the currency as those the quantity of which can be more rapidly increased or diminished; but I am sure that the coincidence which the table exhibits between their prices and the amount of the currency through both the ascending and descending series will appear very remarkable to every one who is not familiar with the connection between them. A reference to a price-current during the period will show that nearly every other commodity traversed the same cycle.

It will be observed by the table that agricultural products fluctuated more than the currency. The reason is that, in conjunction with the general cause which affected all kinds of

business, causes peculiar to this branch of business — some of them arising indirectly from the expansion of the currency, and others independent of it — were in operation. These causes were, —

First, in 1836 there was a general failure of the wheat crop east of the mountains in North Carolina, Virginia, Maryland, Delaware, and Pennsylvania, and a partial failure of it in New York.

Secondly, in consequence of the very high price of cotton and the rather high price of wool, there was a diversion from the raising of grain and provision to the growing of cotton at the South and of wool at the North.

Thirdly, large numbers of laborers were withdrawn from agriculture to be employed in the construction of the numerous works of internal improvement undertaken during this period.

Fourthly, there was a general diversion from agriculture to trade and speculation. The universal and continued rise of prices brought with it increased profits in all branches of trade, and success in every kind of speculation. As long as there was a rising market, every adventure, however rash, must be profitable. This state of things tempted the enterprising and the sanguine from the ordinary pursuits of industry. The sons of the farmer left his fields and flocked to the great commercial marts to embark in the hazards of trade. Emigration received an extraordinary impulse, and the swarms of settlers attracted to the West by the vision of easy and sudden wealth, instead of themselves raising a surplus of the means of subsistence, were obliged to derive their own from the labor of others while they were subduing the forests. Multitudes abandoned their farms and traversed the country engaged in all sorts of traffic and speculation. Our streets were filled with speculators in grain, in provision, in cattle and sheep, and in farms, as well as in village lots and Western lands. The result was that a very diminished quantity of grain and provision was raised, as is shown by the fact that in the year beginning Oct. 1, 1836, more than four millions of

bushels of wheat were imported. The demand for the means of subsistence continuing the same while the supply was thus greatly reduced, prices rose, as a matter of course.

But the currency could not continue expanding forever, nor prices go on doubling once in two years. When prices rose so high that it was profitable to import, but unprofitable to export, our importations exceeded our exportations. This excess amounted, according to the custom-house returns in 1835, to twenty-eight millions, and in 1836 to sixty-one millions. The moment payment of this balance was required, exchange on London rose, and the whole debt became a specie demand upon the banks. They began a contraction of their issues in anticipation, and were obliged to continue it when the demand came. The currency, as is shown by the table already referred to, was greatly reduced; and prices fell by the same power by which they rose.

The revulsion first reached trade and speculation. It now became as ruinous to be engaged in any sort of traffic as it had formerly been profitable. No man could carry through a transaction on the falling market without loss. Meanwhile the prices of agricultural products, though diminished, were still high. Impelled by the double motive, the multitude who had adventured into speculation returned to their farms. Those who had recently embarked in trade found that its uncertainty and hazard more than counterbalanced its supposed largeness of profits; and many who had been bred to commerce learned to prefer the slower but surer gains of agriculture. The planter concluded that he had better raise his own grain and provisions instead of devoting all his plantation to the growing of cotton, which he could scarcely force off at reduced prices in the overstocked markets; and the wool-grower, wearied of exchanging his low-priced wool for high-priced grain, diminished his sheep in order to raise, at least, his own provision. Under the stimulus of the high prices of agricultural products, all these classes pressed into the business of raising grain and provisions; while those already engaged in it were induced by the

same cause to strain every nerve to increase the amount of their productions. And above all, a beneficent Providence sent fruitful seasons and abundant harvests. The result is that a much larger quantity of grains and provisions have been raised. The inspections of flour in Philadelphia were, in the first quarter of 1840, 163,338 barrels; in that of 1839 only 88,776; in that of 1838, 27,515; and the increase in Baltimore and that of other articles in both places is in about the same proportion. The demand for the means of subsistence continuing the same while the supply is thus largely increased, their prices fall as a matter of course; and if for a time they have passed below their natural level, this is a result which reason teaches always must occur, and experience testifies always has occurred, in such cases.

Such is a plain view of the causes of the fluctuation in prices; and I appeal to you to say if it is not a mere history of your business during the last five years. The existence of these causes is within your personal knowledge, and their connection with the effects which have been ascribed to them is obvious to every man's understanding and confirmed by every man's daily experience. We have again and again suffered revulsions in prices, — sometimes much more severe, as I shall presently endeavor to show, than the revulsion through which we have just passed. Those revulsions have been universally attributed to the causes which we now know have been in operation, and which have been regarded in such cases as adequate to even greater effects than those we have recently witnessed.

Causes of the fluctuation in the currency.

"The constant tendency of banks," said Mr. Biddle in explaining the causes of the pressure of 1828, — and he is a good authority, theoretical and practical, as to this fact, — "is to lend too much, and to put too many notes into circulation." Their profits are in proportion to their loans, and their only means of increasing their loans is by enlarging their circulation, or — what has the same effect — the credits on their books called deposits. Their unatural disposition is, therefore, to extend their circulation as much as possible.

The impulse to expansion originates in any circumstances favorable to mercantile excitement and speculation, and the banks, by the law of their existence, yield themselves to its influence until their expansion reaches its natural limit. Prices rise. This local rise of prices makes it more profitable to import foreign commodities, and less profitable to export domestic commodities. Of course the imports exceed the exports. The demand of the importers for bills of exchange with which to pay for their purchases is greater than the supply of bills which the exporters can furnish from their sales. The price of bills of exchange rises until it becomes more profitable to remit specie than to buy bills at a premium. Those who have remittances to make, go to the banks and exchange bank-notes for specie. The banks are forced, in order to avoid failure, to contract their circulation. Prices fall. It now becomes more profitable to export than to import; and an excess of the exports occurs to cancel the previous debt. The supply of bills of exchange becomes greater than the demand; and their price rises until the exporter finds it for his interest to bring back specie for his sales rather than sell the bills he might draw at a discount. The currency and prices having been reduced, — perhaps below a level for a time, — attain an equilibrium.

"Such" — I again quote Mr. Biddle — "is the circle which a mixed currency is always describing." The history of our currency and that of England, which is also composed of coin and paper convertible into coin, is a record of an incessant series of vibrations, — of alternating expansions and contractions, the one producing a plenty of money, over-trading, speculation, and high prices, and the other producing a scarcity of money, revulsion in business, and low prices.

The circumstances that rendered the recent fluctuation more severe than most of those to which we have been accustomed, and second only to that of 1817, 1821, are obvious. The natural and only limit to an expansion of the currency is the rise of foreign exchange, creating a demand for specie for exportation which forces the banks to contract their circulation. In

practice, expansions usually continue increasing until a rise of exchange either occurs or is anticipated; and except for this restraint, they might go on as indefinitely in our mixed currency as in one wholly inconvertible. And it is manifest that as long as the extra demand for bills of exchange, occasioned by the excess of the imports over the exports, can be supplied by bills drawn upon open credits on the books of foreign bankers, or upon stocks sent abroad on sale or hypothecation, the price of bills cannot rise, no exportation of specie can occur, and the banks may go on expanding the currency. Unquestionably the increased expansion would cause a constantly increasing excess of the imports over the exports, until the extraordinary supply of bills of exchange would be exhausted, and then would come the reaction, violent just in proportion as it had been thus unnaturally delayed. Precisely such were the facts in 1835–1837. The excess of the imports over the exports in the year ending Sept. 30, 1835, was, according to the custom-house accounts, more than twenty-eight millions; and making allowance for circumstances which do not enter into these accounts, and which increase the apparent balance, it was about fourteen millions. But the supply of bills of exchange drawn upon open credits and stocks remitted was so great that the price of bills was not only below the point at which specie can be exported, but so much below par that it was profitable to import specie; and a considerable amount was actually imported. The banks still more expanded the currency; prices rose yet higher; importations became still more profitable, and exportations still less profitable; and in the year ending Sept. 30, 1836, the excess of imports over exports was, according to the custom-house accounts, more than sixty-one millions, and according to the other mode of computation, about forty-six millions. Still the supply of bills of exchange from this extraordinary source continued, and kept their price below par, and induced new importations of specie. For the next half year the importations continued excessive, probably to the amount of twenty-five millions more,

although the banks had now become alarmed and began to contract; and exchange did not rise above par until nearly the close of this period, when cotton had fallen, investments in stocks had ceased, and the open credits had been much diminished. Meanwhile the Bank of England, whose over-issues had been the principal cause of these excessive speculations in American stocks and trade, found the exchanges with the European continent against it; and in June, 1836, took measures to contract its circulation, and still more efficient ones in August. At the latter time, in addition to its general effort to diminish the circulation, it directed its whole power especially against the trade in American stocks, and the banking houses which had granted the open credits to our merchants, and which had derived the means to do so to such an enormous extent principally from its accommodations. The result was that, after an ineffectual struggle, those houses were brought in March, 1837, to the feet of that giant institution, and received assistance from it only on condition of their withdrawing at once their credits to our merchants, and importing in a given time a certain large amount of specie. Exchange on England immediately rose above the cost of remitting specie, the mass of open credits was converted into a specie demand upon our banks, and they suspended specie payments. The amount of these open credits was ascertained to be between forty and fifty millions; and the amount of our stocks owned abroad, and principally in England, at this time, was estimated at a hundred and ten millions, a large part of which was known to have been remitted during the previous two years. Taking the forty or fifty millions of open credits and an equal amount of the stocks, which is less than is believed to have been exported within that time, and the aggregate rather exceeds the eighty-five millions which I have assumed as the amount of our over-importations during the same period.

Now it does not admit of question that had our credit dealings with England been confined to the ordinary business credit to our merchants, the commercial balance against us, which

existed early in 1835, would have shown itself upon the exchanges certainly as soon as the latter part of that year. A moderate exportation of specie and reduction of the currency would have taken place, and the additional expansion, the enormous over-trading and insane speculations, which characterized the close of 1835, and especially 1836, would not have occurred, and the revulsion would have been like that to which we are subject every few years, instead of ranking with the most violent and ruinous.

But the elastic energies of the people soon rose from the depression. The exports were increased and the imports diminished, and the foreign debt was paid or converted into permanent investments. The currency rose to a level below which it had been temporarily forced. The prices of those articles which had been for a time reduced below their natural state advanced, and those of other articles remained firm, or tended gradually to an equilibrium. Business became prosperous, and was establishing itself on a sounder and more stable basis.

But a powerful interest, at the head of which was the Bank of the United States, struggled to revive the system of 1836. That institution, with the banks under its influence, had resisted the resumption as long as possible; and when coerced by public sentiment, it resumed but nominally, substituting post-notes for its ordinary circulation. It now became the principal dealer in the exportation of stocks, and attempted to monopolize and hold for a price the great staple of the South. In this effort it greatly extended its issues and those of the Southern and Southwestern banks which it controlled. The influence of the operations in stocks upon the general currency has been already sufficiently exhibited; the renewal of these operations produced the same effect in 1838–1839 as in 1836. The currency had expanded on Jan. 1, 1839, to a hundred and thirty-five millions, or within fourteen millions of the expansion of 1836–1837, and the circulation of the United States Bank and its dependents rose as high as at that time; and in the year ending Sept. 30, 1839, the excess of the imports over

the exports amounted, according to the custom-house accounts, to forty-one millions, and according to the other mode of computation, to nearly twenty-six millions. The domestic speculation was confined to stocks and cotton, in which the United States Bank was the main operator, with the exception of a similar attempt to monopolize beef by dependents of that institution, and flour by its humble imitators. The effect of the attempt to monopolize cotton was to stimulate by high prices to a constantly increasing production, until the accumulated mass could no longer be sustained, and fell with a violent recoil. And the excessive quantities of stocks which were pressed upon the overburdened markets of England rendered them depreciated and unsalable. Embarrassed by the extension of its issues in these transactions and by the failure of both its gigantic speculations, the bank now began a struggle to preserve its own existence, or to bring the other institutions first to the ground, and thus save itself from the bad eminence of solitary failure. It came into the New York market and sold large amounts of foreign exchange when it had no funds abroad to draw upon, and still larger amounts of post-notes, to the purchase of which it tempted our capitalists by the allowance of an interest of from 24 to 36 per cent a year. Although warned that if the bank was itself forced to such resorts it must be in desperate circumstances, or if its debtors paid such ruinous shaves, it must still suffer through their destruction, our capitalists continued to trust with implicit credulity to the financial legerdemain of its managers. Large amounts of its post notes were purchased, not only in the city of New York, but all through the country, even in this and the adjacent counties. The effect of these investments was not merely to withdraw large quantities of capital from the ordinary channels of business on the eve of an approaching reaction, but to furnish the United States Bank with means of strengthening itself at the expense of our banks. It received the proceeds of those sales in the bills of our banks, and took them to their counters and demanded specie. These operations were begun when business

was in a state of comparative tranquillity, and continued through the summer of last year. Although they forced our banks to a contraction of their issues which prostrated trade and reduced prices to their present condition, they could not save the bank itself. In October it suspended, with an amount of unsalable stocks and of paper based on cotton operations probably larger than its whole capital, with the value of its shares reduced one half, and in a general condition which there is a growing conviction upon the public mind will terminate in absolute insolvency. Its failure caused the suspension of the Southern and Western banks; and while it enabled institutions which did not pretend to pay their debts to run upon our banks, thus forcing them to discontinue their accommodations to merchants, it at the same time compelled those merchants to receive the large amount due them in the South and West either not at all, or in depreciated paper at ruinous discounts. The result was that a pressure was felt in our commercial metropolis during the last fall and winter which all agree in pronouncing infinitely more intense and destructive than that of 1837. The whole circulation of the city banks, including the eight with large capital which have gone into operation under the new law, was, on the 1st of July last, 20 per cent lower than that of the banks of the city at the suspension of specie payments in 1837. The contraction of the city banks forced the country banks to contract. From Jan. 1, 1839, to July 1, 1840, the circulation of the country safety fund banks was reduced one half; and allowing for the amount replaced by the new banks, the whole circulation, including that of all the new banks, was reduced not less than one third. The effect of the general pressure upon business extended itself to agriculture, which had not been materially affected by the revulsion of 1837; and, combined with the abundant crops, reduced prices to a condition which, if we compare them with those of a long series of years, although lower than we have been accustomed to for a few years past, are not so low as those of manufactured and imported articles, or so low as

might have been expected from the mighty causes which have been in operation.

In view of these facts, gentlemen, I charge that the United States Bank by its speculations in cotton and stocks, which for two years past have governed our foreign exchanges and our currency, was the main cause of the present revulsion in the circulating medium, in business, and in prices.

I charge that by these speculations it caused the expansion of the currency and the over-importation of foreign commodities; and aver that domestic over-trading was almost exclusively confined to cotton and stocks, in which it was the chief operator.

I charge that when its speculations miscarried, by its operations in exchange and post-notes and by its suspension, it brought the chief violence of the revulsion upon the North and East, which had not largely shared in its extravagance.

Finally, I charge that its particular friends and advocates among us, by their investments in its exchange and post-notes, furnished the instrument with which it struck down the business prosperity of this State, and inflicted upon us the consequences of its own misconduct. In making these allegations I but state notorious and undeniable facts.

Mr. Webster on the disorders of the currency.

When the revulsion of 1837 was far advanced, Mr. Webster, thinking, doubtless, that he might safely walk in the light of his great financial luminary, Mr. Biddle, denied that there was any expansion of the currency or over-trading, and appealed to the favorable state of the foreign exchanges to prove the fact, — forgetting, or not knowing, that the doctrine of exchange assumes the dealings between nations to be cash transactions, and is safely applicable only when that assumption is substantially true, while at this time the reverse was a well-known fact. He alleged that the pressure was artificially produced, in a sound state of business, by the Administration. But the progress of the revulsion developed causes which made even the blind to see. Every one of Mr. Webster's positions was proved indefensible. Mr. Webster and Mr.

Biddle learned to take the doctrine of the exchange with a condition, — that a man's pocket is a test of the state of his finances only when he pays as he goes along. They got clearer ideas of over-trading, which both had complained that they could not understand; and they confessed that it had existed in every possible form. The old ground was no longer tenable; and Mr. Webster selected his new one less with the spirit of a philosophical statesman than with the instinct of a partisan determined at all events and upon the most inconsistent pretences to hold the Administration responsible for the mischief. He now alleged that there had been expansion and over-trading, and that General Jackson, whose previous warnings against them he had derided, was the author of them. He has in his recent speech in New York repeated his indictment in due form; and I propose to examine whether he has sustained it any better than he did his former one. I give an extract from his speech in which he attempts to make out his case: —

"I do now, here in your presence, charge upon the Administration of the National Government the great expansion of paper money and the sudden contraction of it which has so deranged the currency. I will prove it by facts and dates and figures. Let us go back no farther than 1832, when it was settled by the veto of General Jackson that the Bank of the United States should not be rechartered. Let us take a series of years by tens and fives, and thus trace the history of the creation of the banks in this country. From 1820 to 1830, a period of ten years, there were but twenty-two new banks made in the United States, and these twenty-two banks added to the banking capital no more than eight millions. From 1820 to 1830 the Bank of the United States was in operation, and in 1830 no man had a reasonable doubt that it would be continued. In the next ten years — namely, from 1830 to 1840 — the increase of banks was three hundred and forty-eight, instead of twenty-two, and the increase of capital two hundred and sixty-eight millions, instead of eight millions; and this was the progress of bank expansion during the charming years of the experiment! Let me go farther. Not only was there in these years of experiment this increase of banks and banking capital, but also the extraordinary proceeding of Government in moving the deposits. This was in 1833. And the Secretary of the Treasury,

soon after removing the deposits, told the banks that it was their duty to discount freely, and that the money of the Government should be given to the banks for that purpose; and it was said by one cashier of this city that he did not know what to do, as he was ordered by Government to lend more money than he could get security for. It was from this increase of discounts by these banks, by order of the Secretary of the Treasury, that the expansion of the banks sprang."

More errors as to facts and principles have seldom been comprised in the same space.

Mr. Webster assumes in his whole argument a false standard. To illustrate the effect of the banks in expanding and contracting the currency, he takes their number and capital from a table which also contained their circulation! He does this when a slight knowledge of general principles, or a slight inspection of the table he used, would have shown him that there is no necessary proportion between capital and circulation, and when in the two periods which he selects to illustrate his argument, the disproportion of the increase of capital was sixteen times as large as that of circulation!

Mr. Webster commits gross errors as to facts. He says that from 1820 to 1830 there were but twenty-two banks with eight millions of capital "made" in the whole Union; and he argues that the cause was that no man had a reasonable doubt that the United States Bank would be continued. Now the fact is that in his own Massachusetts at least thirty-five banks were created during this period, — eight in New Hampshire, nine in Vermont, seventeen in Rhode Island, and about twenty in this State in the single year 1825. The statement for 1820 on which he founds his argument includes a multitude of mushroom institutions, more than fifty in Kentucky and Ohio alone, which had sprung into existence in the previous expansion, and survived but a brief period. The very large number of banks that failed, and those that terminated their nominal existence between 1820 and 1830, nearly equalled the whole number of new ones created. Such very likely will be

again the case in the next ten years. With all deference to Mr. Webster, the mere statement of the whole number in existence at dates taken arbitrarily or selected for a purpose, and without reference to the circumstances of the case, proves just nothing at all. Even his perspicacity has not enabled him to discern very accurately the history of business for ten years from such superficial data as the footings of the tables of recapitulation.

Mr. Webster altogether mistakes the principle which governs the increase of banks in different periods. All experience has shown that the increase of banks is controlled by the same law as an extension of any other kind of business or speculation, and that it is more an effect than a cause of an expansion of the currency. On April 11, 1818, two years after the United States Bank had been chartered, and when the expansion which it produced was highest, Mr. Niles said: "We see everywhere new banks establishing or attempting to be established. Behold forty-three new banks authorized in Kentucky, half a score in Tennessee, eight in Ohio, a mob in little Rhode Island, some in Virginia, Maryland, Massachusetts, etc., sixteen petitioned for in New York and some wanted in Pennsylvania, half a dozen new ones in Maryland, and from fifty to a hundred more proposed in various parts of the United States."

Again, in 1825, when an expansion occurred mainly through the operations of the United States Bank, the Legislature of this State incorporated some twenty banks; and at the next session applications were made for twenty-seven with capitals of $22,500,000 in the city of New York, and thirty-seven with capitals of $13,250,000 in other parts of the State.

Again, in 1836 there were established in England, according to McCulloch, over two hundred joint-stock banks and branches, or more than two thirds as many as had been created in the whole ten years previous; and according to Mr. Poulett Thompson there were on the *tapis* at one time joint-stock companies with projected capitals of nearly one thousand millions of dollars.

These facts show the absurdity of attributing, as Mr. Webster has done, the difference in the increase of banks in the periods which he selects, to the continuance or discontinuance of the United States Bank. All that gives plausibility to his reasoning is his having taken for comparison periods in which the two circumstances happened, although to a much less extent than he supposed, to be contemporaneous. If he had extended his comparison two years farther back, to 1818, his whole theory would have been overturned. Or if he had tested it by our experience in 1825, or that of England in 1836, its fallacy would have been obvious. His logic of "series of years by tens and fives," by which he proves that the increase of banks in this country was occasioned by the discontinuance of the United States Bank, would prove just as conclusively that the increase of banks in England was produced by the same cause!

The simple truth is that in a period of expansion, banks, like other speculations, will multiply, and usually in proportion to the extent of the expansion; and this is just as true whether a United States Bank be in existence or not. From 1820 to 1830 the payments of the national debt exceeded the investments of foreign capital in our securities, and created a constant efflux of capital which kept the foreign exchanges generally adverse, and maintained a general tendency to a contraction of the currency; the effects of the revulsion with which the period began, continued in some parts of the country almost to its close, and for years in every part of the country; and the whole period may be characterized as one of depressed business and low prices. From 1830 to 1840, on the other hand, the large influx of foreign capital, occasioned partly by an increased confidence in our securities since the payment of the national debt, and partly by a speculative disposition which has prevailed abroad, has kept our foreign exchanges unnaturally favorable, and maintained a constant tendency to an inflation of the currency. These general causes were too powerful to be resisted by any bank, even if inclined to do so; and certainly the late bank never evinced, while a national

institution or since, any disposition to such an extraordinary degree of prudence as to counteract the natural and strong tendencies of the times.

Mr. Webster's allegation that the expansion of the currency was caused by the removal of the deposits is no less fallacious. If he had said that the trading on the public moneys by any banks increased the expansion, every well-informed man would have agreed with him; but when he says that all the mischief came because the deposits were made in the State banks instead of the United States Bank, he reduces the whole discussion to a mere question as to the relative skill and prudence of these two sets of banks, and makes up an issue which must inevitably be decided against him. Mr. Webster has constantly repeated this allegation for years; but I have yet to learn that he has ever advanced a single fact in its support. If he had taken the trouble to examine the condition of the banks during that period he would have found that all the evidence is against him. He would have found that in the year 1835 — at the beginning of which the currency was about on a level, and during which the principal expansion occurred — the deposit banks increased their circulation in a ratio only about half as large as the United States Bank, and their loans in about the same proportion as that institution; and this when the deposits were removed to the State banks and from the United States Bank! Mr. Webster's allegation assumes that the United States Bank would have been the first to anticipate and guard against the expansion and revulsion; when the fact is that it was the very last to do so, and that when everybody else was alarmed Mr. Biddle wrote a long argument to prove that there was no danger, and became aware of his mistake only when he met a worse and more fatal overthrow than any of the rest. Mr. Webster's allegation assumes that the United States Bank would have conducted its business with more prudence and skill than the deposit banks, when the fact is that while most of them are now in a state of comparative prosperity, it has never recovered from its fall, and has gone

on, like a desperate gamester, struggling to retrieve its fortunes by deeper stakes, until it is involved in utter bankruptcy. This story will no longer answer. Mr. Webster may convince us that it is mischievous to have the public moneys traded upon by any bank; but he cannot easily convince us that it is still more mischievous — nay, absolutely ruinous — not to have them traded upon by the worst-managed bank in the whole country!

The real interest of producers.

It is the interest of the farmer and every other producer to have stable and unfluctuating prices for his productions. If he could be assured of receiving for each year of a series the average of those years, who would not prefer it to uncertainty and fluctuation? and who does not desire to approximate as nearly as possible to such a state of things?

Although it might make no difference what the nominal prices of commodities were, if each of those commodities would command precisely the same amount of all the others, the process of change in the nominal prices produced by a change in the currency is always injurious; it unsettles the ordinary habits and methods of judgment, and causes uncertainty, confusion, and miscalculation in business. Its chief evil, however, is that it alters all contracts, by changing the standard with reference to which they were made. If a man gave his note last year for a hundred dollars, and meanwhile the whole amount of the currency and the prices of commodities on the average have doubled, he will pay but half the value he agreed to pay, — the same number of dollars having half the power in the purchase of commodities. Or if the whole amount of the currency and the prices of commodities on the average have been diminished one half, he will give twice the value he agreed to give. In the multiplied and complicated relations of business, contracts are so numerous that a universal change in them, although to a less extent than I have supposed, seriously affects the interests of every man, and is, indeed, the main cause of the inconvenience and difficulty which are felt in a pecuniary revulsion. The effect is just as if our

bushel measure were incessantly fluctuating in its size, and our yard measure in its length, — except that fluctuations in the measure of value affect infinitely more cases, and are therefore infinitely more mischievous.

An unstable currency, producing instability in business and prices, is peculiarly injurious to the farmer. Neither his education nor his disposition accustoms him to watch the barometer of the exchange. When he has conducted his business with prudence and skill, with a familiar knowledge and sagacious estimate of all the circumstances that belong to it, he ought to be safe. He ought not to be subject to the tremendous agency of an unseen cause which may disappoint his wisest calculations and overwhelm him in sudden ruin. He ought to be secure in the tranquillity of his fireside from the curse of an unstable and fluctuating currency.

Effect of the Whig policy in regard to the public revenues.

The Whig and conservative policy is to deposit the public revenues in banks to be loaned out to individuals to trade and speculate upon.

An excess in banking and trade causes the public revenues to accumulate. If they are deposited in banks, they are, as fast as they accrue, loaned out to individuals; and, incessantly passing round the circle, by enlarging the profits of the banks and extending the facilities of the merchants, they stimulate both to constantly increasing excesses. And when the revulsion which always follows excess comes, the receipts of the Government fall below its expenditures, and it is forced to collect from the banks and the merchants, in the time of their greatest need, what it loaned to them in a period when they were already over-trading. The natural and inevitable operation of the system is thus to urge to greater extremes the ordinary fluctuations in the currency, and consequently in business and prices.

Effect of the Whig policy in regard to the currency.

The Whig policy is to establish a national bank to regulate the currency. The Whigs have heretofore made this a cardinal measure, and supported it through the long contest to which it gave rise. Have they changed their opinion? Do they now think that a United States

Bank ought not to be established? On the contrary, the measure is either openly advocated by them, with some individual exceptions, or admittedly postponed only to a more propitious season. Their leading men and organs are avowedly in favor of such an institution. General Harrison has declared that he will not refuse to sign a bill to create one; and Mr. Webster and Mr. Clay, who will, if he should be elected, be the master-spirits of his Administration, are constantly urging the indispensable necessity of such an establishment to regulate the currency. What stronger evidence could we have of the general desire and expectation of the party? On what subject are they more thoroughly committed?

The great question at issue between the two parties is as to the mode of conducting the public finances and of regulating the currency. The whole scheme of the Whig policy as to this question,—all the complaints of the Whigs against the present Administration, and all the inducements to a change which they hold out to the public,—are based upon an implied advocacy of a national bank.

The main ground on which they urge that the Democratic Administration shall be displaced, is that by the destruction of the National Bank it struck out the balance-wheel of the currency and caused the derangement of business. If, then, they should be put in power, would they not reverse the policy which they say has occasioned the mischief? Would they not restore "the balance-wheel of the currency?" They promise to rectify the disorder in the currency and business. What is their remedy? Have they ever intimated any mode of regulating the currency, other than a revival of the national bank?

They clamor against the independent Treasury; but the public finances must be administered in some mode, and there are only two other modes,—the State bank deposit system, and a national bank. If the Whigs are elevated to power, will they revive the State bank system, the attempt to establish which was, and still is, one of their main charges against General Jackson, and against which they have clamored as

violently as against the independent Treasury? The only alternative, then, is a national bank.

Unless the Whigs intend to establish a national bank in case they get the power to do so, all their allegations in regard to the main issue before the country by which they seek to influence the people are hypocritical. If they are not committed to such a policy by their arguments, professions, and promises, no party can be committed to anything. The design of creating a bank is denied only when the free-hearted yeomanry of the country, who are naturally hostile to such an institution, are addressed. Among the commercial classes it is openly avowed, and forms their main motive to support General Harrison.

How could a large bank, constituted on essentially the same principles, be expected to regulate beneficially the lesser banks? Has enlarged power been found to be less liable to abuse than limited power? Has concentrated power been found less liable to abuse than distributed power? How a national bank regulated the currency.

If any man entertained an exception so contrary to all human experience, the experience ought to satisfy him of its fallacy.

The United States Bank began its operations in January, 1817. Although a nominal resumption of specie payments by the State banks took place, the currency was dangerously extended. The bank urged its notes into circulation with unprecedented rapidity; and the excess causing a constant exportation of specie, it sought to counteract that effect, not by reducing the currency to its proper amount, but by forced importations of specie, which it made to the extent of seven millions and at a great loss. It continued these operations till July, 1818, when its circulation amounted to nine millions, and its loans to forty-nine millions. A revulsion then set in, and the bank began a rapid contraction. But its affairs grew every day worse. In February, 1819, Mr. Jones, its president, resigned, and Mr. Cheves, of South Carolina, was appointed in his place. In an exposition made several years after to the stockholders, that gentleman states that as he was about to

set out on his journey to Philadelphia, he was apprised that the bank would soon be obliged to stop payment; when he "reached Washington, he received hourly proofs of the probability of this event;" and that "in Philadelphia it was generally expected." He states also that on the 1st of April the specie in its vaults was reduced to seventy-nine thousand dollars, while its balances to the Philadelphia banks were one hundred and twenty-six thousand dollars. By a rigorous contraction of its issues and the cutting off of all its exchange business, by the whole aid of the Government and a loan in Europe, it barely weathered the storm, but was for years in a sickly condition. The prostration of business and prices during this period was without a parallel, and the bank was universally regarded as the main agent of the mischief. The reduction of the whole currency, from the height of the expansion to the 1st of January, 1820, was one third; that of the circulation of the bank was nearly two thirds.

The next great crisis was in the fall of 1825. Mr. Biddle, in his testimony before a committee of Congress, describes it as "the most disastrous period in the financial history of England," when the "wild speculations in American mines, and wilder speculations in American cotton, recoiled upon England and spread over it extensive ruin;" and says that "the very same storm passed over this country a few weeks before," and "was on the eve of producing precisely the same results." He also states that this "panic, which would have been fatal to the country," was averted by his hurrying to New York and prevailing on a gentleman to accept drafts "who was preparing to draw specie from the banks of Philadelphia" to establish a bank in New Orleans. It has been intimated that Mr. Biddle's private night journey was occasioned by an emergency more peculiar to his own institution than he would have the public suppose; but he admits enough. He shows how near, even on the most favorable account of the matter, the whole system of currency, with its regulator, came to a total overthrow, and by how slight and common a circumstance it was alternately jeop-

arded and saved. Turn now from the account of this hair's-breadth escape to what Mr. Biddle did not so frankly relate,—the source of the peril. The returns of the bank show that its circulation increased in the two years previous to July, 1825, more than 105 per cent, and in the six months previous to that time more than 57 per cent! I have not the means of ascertaining the increase in the circulation of the State banks during this period, but there is abundant reason to believe that it was in nothing like the same proportion. The subsequent reduction fell mainly upon them; the United States Bank succeeding in substituting to a considerable extent its notes for theirs. Its success, however, in the competition for private profit was a poor consolation to the public, who were victims to the process. McCulloch states that during the same two years the country banks of England extended their circulation 50 per cent, and he exclaims against such an increase as "extravagant and unprincipled,"—an increase less than half as great as that of our "regulator!"

A revulsion rather less severe occurred in the early part of 1832. The United States Bank was greatly embarrassed. It procured the payment of the three per cents, for which the Government had provided the means, to be postponed; and when the time to which it had been postponed approached, the bank sent a confidential director abroad to make an arrangement with the holders of the stocks not to present them for payment, while it held and used the money Government had provided for their redemption! The form in which the transaction was first attempted, the bank was obliged to disavow as constituting a violation of its charter, that in which it was consummated being merely a breach of trust! The increase of its circulation during the two years previous to the 1st of January, 1832, was 64 per cent, and its reduction in the summer after about 20 per cent. The circulation of the New York banks increased during the same period 29 per cent; that of the Pennsylvania banks from February, 1829, to November, 1831, about 21 per cent. It is difficult to procure returns from the banks suffi-

ciently near the dates to afford a just comparison; but such as are procured show that the average increase, even if it were larger than that of the New York banks, was very far short of that of the United States Bank.

In the fall of 1833 the removal of the deposits was made, and the panic of 1834 followed. The bank by October, 1834, had contracted its circulation nearly 20 per cent, and its loans more than fourteen millions, as it alleged, in consequence of that measure. When its attempt to force a restoration of the deposits and a renewal of its charter failed, it began an expansion; and by July, 1835, extended its circulation 62 per cent, and increased its loans to nineteen millions of dollars, or five millions more than all the reduction which it pretended it had been forced to make by the removal of the deposits, — and that when its charter had but eight months longer to run! The great expansion which produced the disastrous excesses of 1835 and 1836 occurred mainly in the former year; and the whole enlargement of the currency during that year was 34 per cent, or, if we take the net circulation, 31 per cent; and during that year and the next, less than 44, and if we take the net circulation, 36 per cent. The ratio of expansion of its net circulation by the United States Bank to July, 1835, was, from November, 1834, 62 per cent; from January, 1835, when the currency had reached at least a level, 46 per cent; and from its last return previous to the removal of the deposits, 37 per cent. The bank is justly responsible for the whole amount of its expansion from the lowest point of contraction in 1834, for it had made that contraction under the pretence that such a diminution of its business was rendered necessary by the removal of the deposits; and the vacuum in the circulation, being created under favorable exchanges, was necessarily filled by the notes of other institutions; and the subsequent addition to the currency was as inexcusable as it was dangerous. Such an addition could not fail to create a most injurious excitement in banking and trade, and with a tithe of the power which its friends claimed for this bank over the smaller institutions, to

stimulate them to the utmost extravagance. And when the time of this expansion is considered, no fair-minded man can doubt that it communicated the main impulse to the disastrous excesses which followed.

We have thus seen this institution, which was established to "regulate" the others, twice, according to the statements of its own presidents, on the very verge of bankruptcy, and a third time extricating itself from its embarrassments by a breach of trust which would subject an individual to the penalties of crime; and looking at its returns, we find each of these occasions preceded by an extension of its business unparalleled in any similar institution. We have seen that in every great expansion of the currency which has occurred during the whole period of its existence it increased its circulation in a far larger ratio than the expansion of the whole currency; and these successive expansions, and the revulsions which followed them with short intervening seasons of quietude, have filled the whole history of business during that period. The extraordinary powers of this bank and its freedom from competition, while organized on the same principles, and therefore subject to the same impulses, as other institutions, have only encouraged it to embark on the most hazardous adventures to extend the profits of its business, from which it has been repeatedly extricated only by the credit of the Government or the direct assistance of the Treasury.

Such was the manner in which the United States Bank "regulated" the currency while it was a national institution. For the benefit of those who think the loss of such services the cause of the recent commercial disorders, and their restoration by the establishment of a similar institution the sovereign panacea, I pursue its subsequent history.

On the 20th of February, 1836, Mr. Biddle presented a meeting of the stockholders with the new charter from the State of Pennsylvania, congratulating them on the dissolution of their connection with the General Government, which he pronounced to be an unnatural connection, beneficial neither to "the bank

or the Government," and declaring that "the bank was now safer, stronger, and more prosperous than it ever was."

On the 11th of November, 1836, in a letter to Mr. Adams, Mr. Biddle declared that the revulsion, which had then become severe, was owing to the "mere mismanagement" of the Government; denied "that the country has over-traded, that the banks have over-issued, and that the purchasers of public lands have been very extravagant;" and concluded his long argument to sustain these positions thus triumphantly: "Exchange with all the world is in favor of New York. How then can New York be an over-trader? Her merchants have sold goods to the merchants of the interior, who are willing to pay, and, under ordinary circumstances, able to pay, but by the mere fault of the Government — as obvious as if an earthquake had swallowed them up — their debtors are disabled from making immediate payment. It is not that the Atlantic merchants have sold too many goods, but that the Government prevents their receiving pay for any."

And this in the face of sales of public lands during that year to the amount of twenty-four millions of dollars, and an excess of imports over exports of sixty-one millions! But even this great financier, who was competent of himself to regulate all the business of the country, could at last be made to learn what every man of common sense had known long before.

On the 13th of May, 1837, two days after his bank had suspended, in a second letter to Mr. Adams, Mr. Biddle said: "We owe a debt to foreigners by no means large for our resources, but disproportioned to our present means of payment. . . . We have worn and eaten and drunk the produce of their industry, — too much of all, perhaps; but that is our fault, not theirs." No doubt! But when had we done so? Even Mr. Biddle would not say that it was after the writing of his previous letter.

He also said that "had the bank consulted merely its own strength, it would have continued its payments without reserve."

Certainly! He suspended for the sake of the other banks, just as he made his night journey in 1825 and his fraudulent arrangement as to the three per cents in 1832,—for their sake! These facts all rest upon the same testimony. He promised also to "take the lead in an early resumption of specie payments."

In the fall of 1837, when a convention was proposed to bring about a general resumption, the United States Bank at first refused to join in it; and afterward sent delegates who opposed resumption, and succeeded in voting down the measure through its associates and dependents. And when the New York banks were about to resume alone, on the 5th of April, 1838, in a third letter to Mr. Adams, Mr. Biddle argued at great length that the resumption then was "premature," threatened them in an insolent tone with the consequences of the attempt, and told them to appeal to the Legislature "to rectify their mistake" and legalize a further suspension! The New York banks resumed about the 1st of May; but the United States Bank remained suspended until the latter part of the year, when it nominally resumed by substituting post-notes for its ordinary circulation; or, in other words, notes bearing on their face a promise of payment a year after date for notes bearing on their face a promise of payment on demand!

In the spring of 1839 Mr. Biddle resigned the presidency of the bank, announcing that, having brought it safely through all the difficulties, and leaving it in a sound and prosperous condition, he could now retire from its management. Through the summer it struggled with the embarrassments daily thickening upon it, and in October it failed, inflicting upon the commercial affairs of the country the extensive mischief under which they have been suffering for the year past, but from which — thanks to the beneficent regulation of the laws of trade! — they are now rapidly recovering.

I am aware that attempts are made to evade the force of these facts by alleging that the bank was no longer a national institution. That might be a sufficient reason why it should

not be required to regulate other banks; but is it a sufficient reason why the bank should not regulate itself? If it has become a State institution, should it therefore fail? Should it therefore disturb with its stupendous folly all the business relations of the country? Nor is a reference to its recent conduct so unmeaning as the Whigs would fain have us suppose. Will any one pretend that it has been even tolerably well managed? Can any man recur to its history, or read the manifestoes issued from time to time by the individual who has had its chief management, without disgust at the wretched charlatanry which they exhibit? If it had been rechartered as a national institution, would it not have been under the same management? And would an act of Congress have conferred competency — I will not say sanity — upon Mr. Biddle and his associates? Would a national charter have tamed the tremendous power for mischief under which the whole country has been writhing, or transmuted it into a mere capacity for good? Even if another institution should now be established, in whom could those who are most clamorous for it repose a more idolatrous confidence than they have reposed in Mr. Biddle? I do not wonder that the Whigs are glad to pronounce "the monster dead," or that a bare allusion to him shocks their sensitive nerves. They feel there has not been a question between the two parties as to the subject of currency within the last ten years which has not grown out of, and the merits of which are not involved in, the character of this institution, nor one the fate of which is not the conclusive verdict of experience.

How a United States bank affected business and prices.

Every one who has examined the subject knows that the currency is to business what the blood is to the animal system. Such fluctuations in the currency as I have described could not fail to keep business and prices vibrating between the highest elevation and the lowest depression. But to present a practical and conclusive testimony, I propose briefly to review their history during the period in which a national bank was in existence.

I have said that the fluctuation in the currency, business, and prices which occurred in 1817–1821, when we had a national bank, and of which indeed that institution was a main cause, was far more disastrous than the fluctuation which has recently occurred. I am aware that present objects appear quite different from those which are seen only in the dim distance of memory. The last hot day is the hottest we ever knew, and the last cold day the coldest. Appealing, then, from the indistinct recollections of those who may be inclined to question my allegation, I cite for my witnesses the authentic records of the time, and I produce from them a testimony, not of vague impressions, but of facts, which shall bear with them a decisive commentary to every mind.

Parallel between 1817–1821, and 1836–1840.

The increase of the currency in the expansion which reached its height in the middle of 1818 was, according to Mr. Gallatin, 50 per cent.

The increase of the currency in the expansion which reached its height at the close of 1836, from its state two years previous, when it was about on a level, was, according to the returns of the banks, about 43 per cent.

The same universal over-trading and speculation prevailed at both periods, as is shown by the journals of the day, and is sufficiently illustrated by a single instance. The excess of imports over exports as exhibited by the custom-house returns in the four years ending Sept. 30, 1818, was $165,000,000; and in the four years ending Sept. 30, 1837, it was $135,000,000.

The same high prices prevailed in both expansions, those of 1817 rather exceeding those of 1836. The price of flour at Philadelphia reached in March, 1817, $14.25, and was at its highest point in March, 1837, — $11.00. The price of wheat in Rochester, according to a table prepared by one of its most eminent millers, rose in its highest extreme in 1816–1817 to $2.25 @ $2.50; and in its highest extreme in 1836–1837 to $2.00 @ $2.15.

The contraction of the currency from its greatest expansion to January, 1820, was, according to Mr. Gallatin, 33⅓ per cent; that to January, 1840, is about 28 per cent.

The contraction which preceded 1820 was universally regarded as an adequate cause of the prostration of business and prices by which it was accompanied and followed.

"Niles's Register," a weekly magazine published in Baltimore, and an impartial record, thus describes the pressure on business: —

"From all parts of the country we hear of a severe pressure on men in business, a general stagnation of trade, a large reduction in the price of staple articles. Real property is rapidly depreciating in its nominal value, and its rents or profits exceedingly diminishing. Many highly respectable traders have become bankrupts, and it is agreed that many others must 'go;' the banks are refusing the customary accommodations; confidence among merchants is shaken, and 3 per cent per month is offered for the discount of promissory notes which a little while ago were considered as good as 'old gold,' and whose makers have not since suffered any losses to render their notes less valuable than heretofore." [1]

A committee of the Senate of Pennsylvania, in a report made on Jan. 29, 1820, state that "a distress unexampled in our country since the period of its independence exists in our Commonwealth;" and they enumerate among its forms: —

"1. Ruinous sacrifices of landed property at sheriffs' sales, whereby lands and houses have been sold at less than a half, a third, a quarter of their former value, thereby depriving of their homes and of the fruits of laborious years a vast number of our industrious farmers.

"2. Forced sales of merchandise, household goods and utensils, at prices far below cost, by which many families have been deprived of the common necessaries of life and of the implements of their trade.

"3. Numerous bankruptcies among the agricultural and manufacturing as well as the mercantile classes.

"4. A universal suspension of all large manufacturing operations."

Concluding a very long enumeration: —

"12. A general inability in the community to meet with punctuality the payment of debts even for family expenses" [and by those who are wealthy].

[1] Niles's Register, April 10, 1819.

Governor Clinton in his Messages, the governors of the other States, Mr. Crawford, the Secretary of the Treasury, and committees of the various Legislatures, give similar testimony as to the extent and severity of the distress which then prevailed, — a testimony which was not biased by the zeal of party controversy.

"Niles's Register" thus describes the want of employment by the laboring classes: —

"It is estimated that there are 20,000 persons daily seeking work in Philadelphia; in New York 10,000 able-bodied men are said to be wandering about the streets looking for it, and if we add the women who desire something to do, the amount cannot be less than 20,000; in Baltimore there may be about 10,000 persons in unsteady employment, or actually suffering because they cannot get into business." [1]

A committee of the citizens of Philadelphia reported on the 2d of October that in thirty manufacturing and mechanical branches of trade which gave employment to 9,672 in 1816, there were but 2,137 persons employed in 1819.

A committee of the citizens of Pittsburg reported on the 24th of December that certain trades in their city and vicinity which employed 1,960 persons in 1815 employed only 672 in 1819.

The depression of prices was most extreme in the West. I give from "Niles's Register" a statement from the personal knowledge of its editor, and extracts quoted by him from two other papers: —

"A gentleman in western Virginia directs the 'Register' to be stopped, because he used to pay for it annually with one barrel of flour, but that three will not do it now. Another, a miller in Ohio, on paying his advance to my agent, observed that he had sold four barrels of flour to obtain the note of five dollars which was remitted." [2]

"Corn in Cincinnati ten cents a bushel; wheat in Harrison County, Ohio, has fallen to twenty-five cents a bushel, and in some instances to 12½ cents. A letter from Greenfield, Ohio, dated

[1] Aug. 7, 1819. [2] Sept. 15, 1821.

May 4, states that wheat was sold at 12½ cents a bushel, and that whiskey was dull at fifteen cents a gallon." [1]

"A late Pittsburg (Penn.) 'Mercury' says: Flour a barrel one dollar; whiskey fifteen cents a gallon; good merchantable pine-boards twenty cents a hundred feet; sheep and calves one dollar a head. Foreign goods at the old prices. One bushel and a half of wheat will buy a pound of coffee; a barrel of flour will buy a pound of tea; twelve and a half barrels will buy one yard of superfine broadcloth."

I read from a table of the prices of wheat at a large flouring establishment in eastern Ohio: —

Wheat in eastern Ohio ranged,

in 1820	15–25 cts.	per bushel.
1821	25–37 "	"
1822	37–40 "	"

The prices of flour in various places in April, May, and June, 1821, are thus stated in a table compiled by Mr. Parish, of Ohio: —

New York,	$4.50 per bbl.	Charleston,	$4.25 per bbl.
Philadelphia,	4.50 "	Richmond,	3.87 "
Boston,	4.87 "	Mobile,	3.75 "
Baltimore,	4.50 "	New Orleans,	3.12 "

The state of prices in our own region during the same period is exhibited by a table which has been carefully prepared from the most authentic sources. The prices in Philadelphia are taken from a table in "Hansard's Register;" those in Rochester from one prepared by Mr. H. Ely of that place; those in New York from the sales-book of a freighting establishment in Hudson; and those in New Lebanon from the books of a merchant in this town: —

	Philadelphia.	Rochester.	
	Flour in March, bbl.	Wheat, bus. — Range.	Average.
1820	$5.00	$44–62	$52
1821	3.75	33–50	40

	New York. Average of the year.				New Lebanon. Average of the year.		
	Wheat.	Rye.	Corn.	Oats.	Rye.	Corn.	Oats.
1820	.65	.50	.37	.31	.51	.47	.30
1821	.68	.44	.44	.27	.45	.45	.30

The depression of business in the interior continued severe

[1] United States Gazette (Philadelphia), May 23 and June 23, 1821.

for the three or four following years. I take from the numerous testimonials an extract from a speech of Mr. Clay in March, 1824, in which he thus describes the condition of the country: — Business and prices since 1821.

"In casting eyes around us, the most prominent circumstance which fixes our attention is the general distress which pervades the whole country. It is indicated by the diminished exports of native produce; by the depressed and reduced state of our foreign navigation; by our diminished commerce; by successive unthreshed crops of grain perishing in our barns and barn-yards for the want of a market; by the alarming diminution of our circulating medium; by the ruinous bankruptcies, not limited to the trading classes, but extending to all orders of society; by a universal complaint of the want of employment and consequent reduction of the wages of labor; by the ravenous pursuit after public situations, not for the sake of their honors and the performance of their duties, but as a means of private subsistence; by the reluctant resort to the perilous use of paper money; by the intervention of legislation in the delicate relation between debtor and creditor; and above all by the low and depressed state of the value of almost every description of the whole mass of the property of the nation, which has, on an average, sunk not less than about fifty per cent within a few years."

In the commercial part of the country business had been gradually gathering material for the new revulsion which occurred in 1825, and to Mr. Biddle's description of which I have already adverted. The commercial distress was very great. A large number of banks failed. It was estimated that of four thousand weavers employed in Philadelphia in 1825, not more than one thousand were employed in May, 1826.

The prices of agricultural products which, although somewhat improved, had continued depressed through the intervening period, were reduced nearly as low as, on the whole, and in some instances even lower than, in 1821. The tables to which I have referred give their state thus: —

Philadelphia. In March.	Rochester.	New York.			New Lebanon.		
	Average.				Average of the year.		
Flour.	Wheat.	Rye.	Corn.	Oats.	Rye.	Corn.	Oats.
bbl.	bus.	bus.	bus.	bus.	bus.	bus.	bus.
1825 . . $5.12	.73	.44	.44	.22	.50	.45	.22
1826 . . . 4.50	.59	.54	.60	.36	.53	.50	.30

In the close of 1828 there was another revulsion, which Mr. Biddle, in an essay which he published to explain its causes, ascribed to "over-trading brought on by over-banking."

In a letter to the Secretary of the Treasury, dated July 18, 1829, he says that the branch at Portsmouth, N. H., "was nearly prostrated last year in the general ruin which spread over that country;" and he states that one third of all its loans was protested, and one quarter would be finally lost.

The Providence "Literary Subaltern" of July, 1829, thus described the distress which prevailed: —

"The embarrassments which have been suffered in this immediate neighborhood have had no parallel in the history of the Republic. Men who for the last forty years have stood firm, erect, and undismayed before the tempest of the times are now tottering on the verge of bankruptcy and ruin. Within the last ten days, in the circle of the ten adjacent miles, upward of twenty-five hundred persons have been suddenly and unexpectedly thrown out of employment."

The Providence "Herald" said: "The situation of some, and indeed most of these families, is miserable in the extreme, — reduced almost to starvation."

The price of agricultural products was again reduced.

Philadelphia, March, 1830.		Rochester, April, 1830.	
Flour . .	$4.50 bbl.	Wheat .	75 cts. bus.
New York.		Corn . .	35 "
Flour . .	5.00	Oats . .	20 "
Beef . .	6.00	Potatoes .	18 "
Pork . .	9.00	Beef,	$2.50–3.00 cwt.
		Pork,	4.00 "

It is difficult to compare the prices of wool at different times, on account of the variations in the quality of even the same flocks; but I am informed by those who were then and are now largely interested in the business, and whose means of judgment entitled them to unqualified confidence, that for a period of three years preceding 1830 the prices of wool were 10 or 15 per cent lower than now; and these statements are verified by my own personal knowledge of the business.

Mr. Webster, in his recent speech in New York in favor of a United States Bank, selects the ten years between January, 1820, and January, 1830, to illustrate the beneficial influence of such an institution, and bases his whole argument on the excellent condition of the currency and business during that period.

I have caused an accurate average to be made from the authentic tables already referred to of the prices of the principal agricultural products during these ten years and the year 1830, which is usually selected for the same purpose by the advocates of a national bank, and when prices were little above the average of the other years, and give you the result compared with the prices of the same articles in the same places at the present time. The prices of beef and pork are taken from the actual sales in New York by a merchant in this town.

TABLE

Showing the average prices at different places of the principal agricultural products during the period of eleven years beginning January, 1820, and ending December, 1830; and also the present prices of the same articles at the same places.

Average of the eleven years, from 1820 to 1830, inclusive.	Oct. 1, 1840.	Advantage of the present prices over the average of the eleven years.
	New York.	
Rye, 53 cts. bus.	62 cts. bus.	17 per cent.
Corn, 50 "	53 "	16 "
Oats, 30 "	40 "	25 "
	New Lebanon.	
Rye, 55 cts. bus.	66 cts. bus.	20 per cent.
Corn, 50 "	63 "	26 "
Oats, 31 "	38 "	22 "

Rochester.

Average of the eleven years.	Average of 1840.	
Wheat, 82 cts. bus.	85 cts. bus.	4 per cent.

Average of the eleven years, Oct. 1, 1840.

New York.

Mess Beef, $8.77 bbl.	$13.38 bbl.	53 per cent.
Prime Beef, 5.72 "	9.88 "	73 "
Mess Pork, 12.54 "	15.75 "	26 "
Prime Pork, 8.90 "	13.75 "	54 "

And yet Mr. Webster, who selects this very period to demonstrate that a national bank is indispensable, and that the

contrary policy of the Administration is ruinous, goes among the farmers of old Suffolk, with tears in his eyes, as the Whig papers state, mourning over the present low state of prices, and urging the adoption of the Whig policy as the only remedy.

The period which I have briefly reviewed includes fifteen of the twenty years of the charter of the United States Bank, and fourteen of the nineteen during which it was in operation as a "regulator." The remaining five years were distinguished by the revulsion of 1832 and the panic of 1834. The connection of that institution in the last year of its existence in its national character and in its present character with the revulsions of 1837 and 1839 I have already sufficiently exhibited. I submit to the farmers of the country to determine whether they will again return to the dominion of such a "regulator" of the currency, of business, and of prices.

Effect of the Democratic policy.

From the time when Alexander Hamilton initiated the system of depositing the public moneys in banks, the National Treasury had been but an imaginary existence. It had never been defined by law; and, by a legal fiction, was supposed to be any and every place in which the public moneys might happen at the time to be deposited. The independent Treasury is simply a law giving reality to what before was fiction, and organizing a treasury for the moneys of the people, independent of private banking and trading institutions. The manifold evils which had arisen from mingling the public moneys with those of corporations and individuals caused the enactment of a law for their permanent separation. And as it would be the same thing in practical effect whether the public moneys were invested in credits on the books of the banks called deposits, or in the notes of the banks, provision was made for a gradual disuse of their notes until the separation between them and the Government should be rendered complete.

The allegation that it will destroy all the banks, establish an exclusively metallic currency, and thus reduce prices, is absurd in all its parts. How is a refusal to lend, directly or indirectly, the public moneys to banks to be traded and speculated upon to destroy all the banks? Will they not still have their own capital to do a legitimate business with? Does it ruin all the merchants or all the mechanics not to have the moneys of the people to conduct their business with? Such is the result of special preferences by the Government to a particular class. What was at first conceded as a matter of convenience or of favor is at length claimed as a matter of right; and multitudes allow the pretension who would scout it as absurd if set up by any other class.

The independent Treasury will not produce a metallic currency.

But the measure, say our Whig friends, will create a ruinous demand for specie upon the banks. There is just as much danger that it will do so as that the water of the stream which passes through your farm will all run off to the lands of your neighbor. The Treasury will not be an insatiable vortex into which all the specie in the country will pour itself, never to reissue. A stream nearly equal will be constantly flowing through it, but no large amount will ever be withdrawn from the general circulation. The accumulation in the Treasury will equal the amount of the public balances on hand, which need not ordinarily exceed five millions, and can be easily limited if necessary; and the system, as will presently be shown, will operate as a self-adjusting check to restrain fluctuations in the amount of the public revenues, and effectually prevent accumulation of the public balances.

Ample experience has already decided this question. During the long period in which the United States Bank was the agent through which the public revenues were received, that institution either rejected the bills of the other banks, or received and converted them at short intervals into specie. This was the mode by which it attempted to regulate their issues; and the effect might have been beneficial, had not that institution fallen

into the same errors and caused the same disorders. Under the independent Treasury system, while the banks are relieved from an unequal competition in their legitimate business, they will be subjected to only the same restraint as before; while the benefits of that restraint will not be counteracted by the errors of the system by which it is imposed.

Nor would a metallic currency reduce prices.

Having already shown that the independent Treasury cannot produce an exclusively metallic currency, I might stop here. But I feel bound to expose one of the grossest misrepresentations which was ever attempted to be palmed upon the community. I assert, then, that the average of prices is not perceptibly different whether under a mixed currency of coin and convertible paper like our own, or under one purely metallic; and that the only essential difference is that prices fluctuate around that average more under the mixed than under the metallic currency.

The prices of commodities, taken in the mass, in a country at different periods, depend upon the relative amount of the currency at those periods; and that amount is nearly the same on the average, whether the currency is metallic or of convertible paper. The difference caused by a change of one to the other in any country is only in the proportion which the quantity changed bears to the entire mass of mixed and coin circulation and of gold and silver in the world, and is so very trifling that the principle is usually stated without qualification. Assume one hundred and twenty millions to be the proper amount of active circulation in our own country. That is 50 per cent more in proportion to our population than Mr. Gallatin estimated it in 1830, and more than it has ever been, except during two brief periods of expansion, and probably twenty millions more than its present amount. If, then, there be eighty millions of specie in the country, either in circulation, or in the vaults of the banks, or hoarded in the districts where specie payments are suspended, an addition of forty millions, or, if we should leave fifteen millions in the banks as the basis of their deposits, of fifty-five millions, would be

sufficient. Mr. Gallatin and other high authorities estimate that there are now existing, in Europe and America alone, at least four thousand five hundred millions of the precious metals. The withdrawal for our special use of the amount which we should need to give us a purely metallic currency could therefore affect the value of the general stock to the extent of only about 1 per cent. In point of fact, it would produce no perceptible effect. The resumption of specie payments in England created an extraordinary demand for gold of about one hundred millions in four years; and although gold constitutes only a quarter or third part of the precious metals, the demand was met without any difficulty or sensible enhancement of its price. It is ascertained that in France, with whom the commercial relations of England were most intimate, and from whom much of the supply was derived, the price of gold was at no time during the process enhanced to the extent of three tenths of 1 per cent.

The necessary amount of the currency in a country varies according to the extent and peculiarities of its business, and is just so much as will keep the channels of circulation filled to a level with the currencies of the rest of the commercial world. If a currency, whether metallic or mixed, rise above or fall below that amount for a time, it ultimately adjusts itself with as much certainty as water seeks a level, and maintains through all its variations the same average. The whole system of a currency of convertible paper rests upon the principle that its convertibility subjects it to the same law, as to its amount, which governs a metallic currency, and that the check of specie payments effectually prevents it from permanently varying in amount from the specie which would have circulated if it had not been substituted. This doctrine is obviously true; it has been the received opinion ever since the invention of our system of currency, it has been expounded as an elementary fact by every intelligent writer on the subject, from Adam Smith to Albert Gallatin, and it has been confirmed by all experience. I cannot adequately express my astonishment at

the current misrepresentation of this truth, as well established in political economy as any proposition in mathematics; and I hope that the gentlemen who are disseminating it can plead the excuse of ignorance against the charge of attempting to commit an intentional fraud upon the people.

The essential difference between a convertible and a metallic currency is that the convertible fluctuates through a much larger range than the metallic. The latter can be enlarged in a season of commercial excitement, and reduced in a season of commercial depression, only to the extent to which specie is increased and diminished. But an expansion of a convertible currency is limited only by the apprehension of the banks of an ultimate demand for specie for exportation; and when an over-issue does occur, and produces such a demand, the banks, keeping but a small amount of specie in proportion to their issues, are forced, in order to protect themselves, to contract the circulation many times the amount of specie exported. Business and prices rise and fall in about the same ratio with the fluctuations of the currency.

The phrase "specie standard," if it means anything, means the average of prices from which a metallic currency but slightly varies. During the upper half of the cycle through which our paper currency is incessantly passing, it may be correct to speak of prices being reduced to the specie standard; but during the other half of the cycle it is just as correct to speak of their being elevated to the specie standard. In any other than this narrow sense, to talk of reducing prices to a specie standard is as absurd as to talk of a vibrating pendulum's being on the right or left of the perpendicular. And the Whigs propagate such nonsense at a moment when our paper currency, in one of its periodical vibrations, is reduced, at the very least, 15 per cent below the average and natural amount, and below the amount of specie which would never have been in circulation but for our having displaced it by paper! A terrible reduction that with which they threaten us,—a reduction upward to "the specie standard!" I have not gone into this

discussion because I am an advocate of an exclusively metallic currency, for I am not; nor because it was necessary to my argument: but I wish to hold up to your view this bugbear with which our opponents seek to frighten, where "hard cider" will not coax, and I wish to expose the party cant and the unmeaning, ignorant clamor by which they seek to influence the public mind.

The independent Treasury will tend to make business and prices more stable and prosperous.

An increase of the importations, and consequently of the public revenues, is an early and certain consequence of an excess in banking. Under the independent Treasury system this increase of the receipts of the Government — its expenditures remaining about the same — will create a specie demand upon the banks, restraining their issues and allaying the commercial excitement. And when a revulsion in trade — which invariably follows an excess — reduces the receipts below the expenditures of the Government, the payments from its previous accumulation of specie will lessen the contraction of the currency and mitigate the violence of the reaction. The system will, especially with cash duties, indicate and check an excess in the currency on the same principle as the foreign exchange, but more promptly, and without being affected, as that may be, by fluctuations in our credit dealings with other nations. It will operate, to the extent of its power, as a self-adjusting regulator of the currency. In restraining fluctuations in the currency it will render business and prices more uniform and stable; and it will do this, not by any direct interference or the exercise of any discretionary power, but by a fixed law and in the ordinary financial action of the Government. It establishes the great doctrine of a divorce of bank and State,—a doctrine as essential to the prosperity, the happiness, and the morality of society as the divorce of Church and State. It opens the way for the introduction into banking of a principle, the operation of which has been found equally salutary in politics, in religion, and in business, — the principle of equal freedom. Mankind have been taught, and

The independent Treasury is identified with a great American principle.

have generally believed, that they must have a monarch and a privileged nobility to regulate their political affairs, and a monopoly church and a privileged clergy to regulate their spiritual affairs. The American people have tried the principle of equal freedom in politics and in religion; and they have never regretted either experiment. Mankind have also been taught, and have generally believed, that they must have monopolies and privileged individuals and associations to regulate their business affairs. The American people have tried the principle of equal freedom in nearly every branch of business; and they have found all those branches better regulated than under any other system, and themselves, as a necessary consequence, outstripping in prosperity all the rest of the world. But they have unfortunately adopted the old system in one kind of business, and they have found that business the very worst regulated of any, and all other kinds suffering under evils of its infliction.

Our National Government has claimed not only the power, naturally belonging to it, of fixing the standard of value, and that conferred on it by the Constitution of supplying the legal currency of gold and silver, but also the power of furnishing the common form of circulating credit which is sustained by the voluntary consent of individuals. It has then farmed out what it claimed to be a prerogative of sovereignty to a great trading monopoly organized on the principles of private business, prescribing certain general regulations which the lawyers and farmers in Congress regarded as the great secret of banking, and assumed to substitute for the laws of trade which Nature has ordained. The State governments have imitated the example, and a system has thus grown up, subject to all the dangerous impulses of private business, but exempted, under pretence of Government regulation, from the laws of trade by which those impulses would be restrained.

It would not be difficult to show that nearly all the evils of banking proceed from such unwise legislation. The occasion will not allow me to enter at length upon this subject. I

should otherwise hope to be able to exhibit and prove by admitted facts the mode in which legislation suspends or obstructs the natural laws which would regulate banking,—to show that its artificial restrictions have been wholly inoperative as to the most essential points, and that all the practical regulation which the business has had is from the laws of trade thus hampered. Take a single specimen of the character of our regulations. The great evil of banking is the fluctuations in the aggregate amount of the currency which produce such disastrous vibrations in business. But while we have properly taken the utmost care that a man should not lose a one-dollar note, we have taken not the least precaution against a fluctuation in the currency which shall change the value of his property one half, double a mortgage he may have to pay, or reduce one half a debt he may have to receive, overturn his wisest calculations, and inflict upon him sudden ruin. The amount of aggregate circulation to which the banks of this State were restricted before the suspension in 1837 was about sixty-four millions, and at that time it was reduced to twenty-nine millions; while the largest amount which they ever succeeded in getting into circulation was twenty-four millions. Except as to a few small banks whose local situation exempted them from competition, and as a provision against a general over-issue, this restriction was as purely nominal as if its limit had been a thousand millions. And take the whole Union,—the banks have not been able to get into circulation, in the period of greatest expansion, a quarter part the amount to which they are limited by law. I do not mean to say that a practical restriction could be imposed by law. No man could fix the exact amount of the necessary currency; the attempt to do so would be the height of quackery. But, obviously, every other abuse can be effectually prevented under general regulations; while our system has not only failed to secure us against this evil, but has also greatly increased it by interfering with the operation of the laws of trade, which give us all the regulation we now have, and if not obstructed, would give us all

the regulation the case admits of, and restrain the fluctuations in business to the smallest possible extent.

The true remedy is the gradual introduction into the business of banking of the widest competition, under a few general laws to enforce contracts and prevent frauds. The recent law, although it is extremely defective and embraces many of the fallacies of the old system, indicates an advance of public sentiment. I do not doubt that a good system will be gradually constructed, or that its basis will be equal liberty, and I regard a divorce of the Government from the banks as opening the way to this result; while the re-establishment of a national bank is incompatible with it, and indeed with any measure of adequate reform. It is as idle to talk of freedom in banking with a great monopoly regulator, as of freedom to the serfs of Russia under slavery to their common master. If you return to such an institution you will have made up your mind to the system of monopoly instead of that of freedom; and you must be content with the tremendous vicissitudes in business which have marked the history of the system you have chosen.

I trust that I have succeeded in showing that the depositing of the public moneys in banks of any kind to be traded upon increases the fluctuations in business, and that the scheme of regulating the currency by a national bank has been proved by abundant experience to be an utter and hopeless failure; that, on the other hand, the tendency of the independent Treasury is to impose a moderate and salutary restraint upon the issues of the banks, diminishing fluctuations in the currency and in trade, and that it is associated with the only principle which can ever adequately regulate the currency and give stability and uniformity to the business. There are a few other considerations to which, before leaving the subject, I wish to refer.

A national bank cannot be got into operation without a series of disastrous convulsions. Passing over the fact that it will require as the basis of its business a much larger amount of specie than would ever be employed by the independent

Treasury, and in regard to which there has been so much clamor, a worse difficulty appears. How is it to substitute its notes for those of the State banks to an extent sufficient to give it a practical power over the general currency? It can do so only by taking advantage of a state of the foreign exchanges favorable to expansion and forcing its notes into circulation; and when reaction follows the excess, by its superior power and its connection with the Government bringing the chief violence of the revulsion upon the State banks, and supplanting the business of those whom it crushes. This is not mere anticipation; it is the history of the first two thirds of the existence of the late bank, of the revulsions of 1825 and 1832, and of ten years of confusion in business.

A separation of the Government from the banks is the only mode by which business can be extricated from the vortex of party politics. The original error was when the Government departed from its legitimate sphere to regulate what the Constitution had left to the States, and what even they ought never to have attempted to regulate except by general laws for the repression of frauds as between individuals. From that moment questions were constantly arising which could not be declined, and which, however they were determined, must involve business in the strifes of parties. And such will continue to be the case until public sentiment unites upon the great principle of a divorce of bank and State, and the Government confines itself to supplying the legal currency, leaving all the rest to the local authorities and the laws of trade. Until then we must not expect business to be stable or exempt from the vicissitudes of politics. The policy of the Government is now, for the first time, established upon the right ground. If that policy is unsettled by a repeal of the independent Treasury, questions prolific of agitation and uncertainty will again arise. If the State bank deposit system be revived, endless rivalries between the different institutions for the public patronage will ensue; legislation will be constantly interfering to effect fancied improvements, or to subserve private or local interests;

the coldness of the friends of the national bank and the hostility of the friends of an independent Treasury will have to be encountered; and the end will be, as it was before, when such causes were in operation to a much less extent, a total overthrow of the system. If a national bank be established, the case will be still worse. There will be at the outset a fierce struggle between the principle of monopoly regulation and that of equal freedom; and the bank, being established by one party and opposed by the other party, will inevitably become a political institution, with its political expansions and contractions. Even if such a departure from the principles of business does not occasion its bankruptcy, and if its connection with politics does not cause a speedy repeal of its charter, the ultimate issue of the contest cannot be doubtful. If the immediate result be unfavorable to equal freedom, the struggle will become the more protracted and violent, and will involve business in endless confusion and uncertainty. These great questions and the numerous incidental ones which will arise cannot be finally settled, except by a reference to the principle of a divorce of bank and State. An adherence to that principle by the General Government can alone save business from a most disastrous struggle, — in which it will be for a long period the main subject of our political controversies, — can alone protect it through the future from the caprices of legislation and the vicissitudes of parties, and give it permanent security and tranquillity.

The independent Treasury system has become the law of the land. Business is rapidly reviving, and may establish itself on a basis of permanent prosperity, exempt from interference by the General Government. Is it wise, under such circumstances, to abandon without a trial a system just adopted, after ten years of controversy? Is it not utter madness to unsettle the policy of the Government and involve business in renewed uncertainty, in order to establish a system which cannot be got into operation without causing the greatest disorders, and which, when in operation, gives no promise in

former experience of beneficial influence? I cannot think that the American people will adopt such a course. I cannot think that they will abandon the prospect of a good regulation of the currency on the principle of equal freedom, for the certainty of its bad regulation on the principle of monopoly. I do not believe that they will ever submit their business interests to the despotism of a mighty moneyed institution, or that they will vest in a half dozen irresponsible capitalists a practical power over their property which they never have intrusted, and I hope never will intrust, even to their own representatives.

The wages of labor.

Wages are estimated in two modes, — the one in money, when they are called *money* or *nominal* wages; and the other by the amount of the necessaries and comforts of life which they will purchase, when they are called *real* wages.

Fluctuations in money wages injurious to the mechanic and laborer.

Fluctuations in the currency produce the same fluctuations in money wages as in money prices. They subject the mechanic and the laborer to the same uncertainty, miscalculation, and disappointment in business that fluctuation in prices do the farmer, the merchant, and the manufacturer. Not only this. Wages do not always rise and fall in exact proportion to prices; and it usually happens that when prices are high, the mechanic and the laborer find their command over the means of subsistence diminished; and that when prices are low, they are often, especially if congregated in large establishments, deprived of their accustomed employment. On the whole, then, they suffer more by the vicissitudes in the currency and business than any other class, and have consequently a greater interest than any other in the establishment of a stable currency. I have already sufficiently shown that the measures before the country, advocated by either party, cannot perceptibly increase or diminish the permanent amount of the currency or the average of prices, but only make both the currency and prices fluctuate more or less; and I trust that I have also shown that the tendency of the Democratic measures is to diminish,

and that of the Whig measures to increase, these fluctuations. The general principle applies equally to prices and wages.

I design to consider the subject of wages in its widest sense, — as the remuneration of labor. For that purpose I shall take *real* wages, or wages estimated by the amount of necessaries and comforts which they will purchase, as the true standard; and I shall regard every industrious man, of whatever calling, as a recipient of wages.

All producers interested in real wages.

The farmer receives wages. After he has deducted from his gross income the expenses of his farm, excluding his own and his family's support, the residue is divided into two parts, — the first, profits on the capital invested in his farm, stock, and utensils; and the second, wages for his personal labor, skill, and responsibility in their management. Allowing for the low rate of profits which attends desirable investments, and the high rate of wages which attends the exercise of skill and responsibility as well as mere labor, and regarding the fact that farms are mainly worked by their owners and their families, it cannot be doubted that far the larger share of all the farmer receives and applies to the support of himself and his family, or accumulates, is in the nature of wages. The mechanic lives mainly, and the laborer exclusively, upon wages. It is unnecessary, however, further to distinguish the two parts which make up the net income of the industrial classes, for both parts are in practice affected alike by the general laws to which I am about to refer. This net income of the producers, or the amount of value which can be applied to the purposes of support and accumulation, is evidently the real test of their prosperity.

I now proceed to inquire into the circumstances which affect the remuneration of industry in different countries. Suppose that two communities exist, each composed of the same number of laborers, and that one of these communities, by greater industry, superior skill, or better implements, should produce twice as much as the other of the necessaries and comforts of life. If an equal

Circumstances which determine the remuneration of labor.

division of the products of each community among its members were made, an individual in the first would receive twice as much in remuneration of his labor as an individual in the second community; in other words, his real wages would be twice as large. This would be equally the case whether all the individuals in these communities were laborers, or whether they united the characters of capitalist and laborer, or whether they were divided into separate classes of employers and workmen. For under free and equal laws the division between these classes of the whole proceeds of industry would be equitably adjusted, and the positive amount received by the laborer would depend upon the amount to be divided; or, in other words, the real wages of labor would depend upon its productiveness. And the actual rate of real wages in every country does in fact depend upon the productiveness of its industry, except so far as the whole proceeds are diminished by the consumption of the government, or changed from their natural distribution by unequal legislation.

The connection between the remuneration and the productiveness of labor is everywhere obvious. The return of agricultural produce, according to Baron Humboldt, is in Germany, where wages are low, not over fourfold the seed; and there is reason to believe that it is not more in the larger part of Europe. The produce of wheat in the principal grain-exporting regions near Odessa and the Baltic does not exceed three or four times the seed, and the labor of a man will not obtain one eighth the quantity it would in Illinois. Arthur Young said that agricultural labor in England at double price was cheaper than in Ireland. It was stated in evidence before the Factory Commission in England that although labor is twice as high in the English factories as in those of many other parts of Europe, it accomplishes more than twice as much, and, if measured by that standard, is really cheaper; and the fact has been repeatedly verified. The United States fear the competition, not of India, where labor is lowest, but of England, where it is next highest to our own. England fears most

the competition of this country, where labor is the highest in the world.

The principal agencies which affect the productiveness of industry for which political institutions are responsible are, — first, security of property; and secondly, freedom of industry.

Security of property in its most comprehensive and just sense includes not only security to the capitalist in the possession of property rightfully acquired, but also security to the laborer in the immediate results of his toil. The motive to labor is the enjoyment of its fruits; and just in proportion as the prospect of that enjoyment is increased or diminished will the motive be strengthened or weakened, and industry flourish or languish. Insecurity, whether proceeding from open violence, from oppressive taxation, or from unequal legislation, exerts a deleterious influence upon industry. It diminishes the tendency of capital to increase and invest itself in labor-saving machinery and works of public utility, and it lessens the diligence and efficiency of labor.

In India and Turkey, and most despotic countries, insecurity of person and property exists in every form and to an aggravated extent. Even in France the people, until recently, have been so subject to invasions and civil dissensions that private capital does not hazard investment in mills, bridges, canals, or railroads, which would have been exposed by such events to destruction; the peasantry live grouped in villages, compelled to go daily several miles to their little patches of land, and to raise their heaviest crops on the nearest land to save the expense of transportation, and after all subjected to great expense in cultivation; taxation is heavy, and unequal legislation prevails. In England the capitalist is secure, but the earnings of the laborer are largely consumed by taxation, or transferred to the privileged classes. I was recently told by an intelligent English manufacturer that most of the operatives were improvident and reckless. How should it be otherwise? What rational hope have they of permanently improving their situation? All experience has proved that the goad of

necessity will not stimulate the laborer to diligence and efficiency so much as the hope of bettering his condition.

Freedom of industry is indispensable to the productiveness of labor. If no artificial obstacle exists, every man will naturally devote himself to the kind of business to which he is most adapted, and which will therefore be most profitable to himself; and the largest possible amount will thus be produced. Every restriction on business and every monopoly tends directly to force a misapplication of labor, and thus to lessen its productiveness. In most countries scarcely any business can be engaged in without a long apprenticeship or a special license, or prosecuted except under a multitude of restrictions which frequently interpose an absolute barrier to improvement. Exclusive privileges to follow particular trades or branches of mechanical or manufacturing or other business abound. The prices of monopolized products are invariably enhanced; and while a part of the difference goes to increase the profits of the monopolist, the rest is totally lost in the misapplication of labor, or in the diminished economy which exemption from competition always occasions.

I have already remarked that the actual remuneration of labor in a country does not depend exclusively upon its productiveness, but is also affected by taxation and unequal legislation. Taxation not only discourages production, but it consumes a portion of what is produced; and if, as in most countries, it is unequally imposed, it diminishes still more the share assigned to the laborers. Unequal legislation, monopolies, and exclusive privileges of every description not only lessen production, but even alter the distribution of what is produced, invariably to the injury of the laboring classes. These causes, and those to which reference has already been made, will, I believe, satisfactorily account for the difference in the reward of labor and in the condition of the industrial masses in various countries. I shall confine my illustrations to a single instance; and I select England because the evils to which I have referred exist there in a less degree than in most countries,

and especially because the system of policy which a powerful interest is now seeking to fasten upon this country is derived from her, and its tendencies are best exemplified in her condition.

Example of England.

In England restrictions upon the freedom of industry and monopolies are very numerous. The exchange of domestic productions is embarrassed by excise; and the regulations prescribed to secure the revenue from evasion frequently prevent improvements in manufacture. But I pass over the minor monopolies, which exist more or less in all kinds of business, to a few of a general and important character. The corn-laws impose an annual tax upon the country estimated by high authorities to be at least one hundred and twenty millions of dollars, one fourth of which is supposed to enhance the profits of the great landed capitalists, while the other three fourths are lost in forcing the cultivation of grain upon soils fit, at best, only for pasturage. And this tax, being laid upon an article of necessity, which is consumed in nearly an equal proportion by the poor and the rich, operates as a capitation tax, and its burden falls mainly upon the laboring classes. The other monopolies of articles of food and necessity are estimated by the "Westminster Review" to impose a tax, falling also upon the same classes, of seventy millions of dollars. The monopolies of the products of the colonies are estimated at thirty millions more. The annual cost of the Established Church, to which three fifths of the people are Dissenters, is forty millions, and that of the pauper system is thirty-five millions. The annual charge for the national debt is a hundred and forty millions. and that for the ordinary expenditures of the government a hundred and ten millions. These two hundred and fifty millions "the makers of the laws have contrived" to assess, says Sir Henry Parnell, "first by the selection of the taxes imposed, and secondly by the selection of taxes repealed;" so that only thirty millions of it falls upon the landlords, while the remaining two hundred and twenty millions falls upon the industrial classes. The aggregate of the items which I have enumerated is an

annual burden upon the labor of England of five hundred and forty-five millions of dollars, most of which is taken directly from that portion of the proceeds of industry which is assigned to the laborers as the reward of their toil.

Mr. Pitt said, years ago, "that three fifths of the price of labor is said to come into the Exchequer." Mr. Bulwer has recently estimated that "every working-man is taxed to the amount of one third of his wages." The monopolies have the same influence as taxation, and must still further reduce the amount finally left to the laborer of his own earnings. The whole effect of either is not exhibited by the money price of labor, nor until the laborer purchases with his wages the means of subsistence at enhanced prices.

Is it wonderful that the laboring classes of England are plunged in poverty and wretchedness, and that when, under the vibrations of a monopoly banking system, deprived of their accustomed pittance, they are subjected to absolute starvation? Is it wonderful that, according to the "Foreign Quarterly Review," one sixth of the whole population are paupers?

Mr. Webster, in a recent speech, narrates at length his observations in England as to the wages of labor, and argues that the independent Treasury will reduce wages in this country to the same condition. Mr. Webster on wages.

He is equally unfortunate in his reasonings and in his illustrations. Is he so ignorant of the first principles of the science of currency as to suppose that the independent Treasury can alter in the least the average amount of the whole currency, or affect it at all further than to substitute specie for paper in the small part of it used in government transactions? Does he not know that the whole system of a currency such as ours rests upon the principle that it cannot permanently vary, in its amount, from the specie which would have circulated if it had not been displaced by paper? and that a specie currency differs from a paper currency not in its average amount, but only in its comparative steadiness and uniformity? that if we had a specie currency, of which there is not the least possible danger,

the average price of labor would be the same as under a paper currency?

Mr. Webster talks of the evil of a contracted currency. Does he think that a metallic currency is necessarily small? Is he not aware that the specie currency of France is twice as large, in proportion to population, as ours of paper and specie both? that her low wages depend upon entirely different causes from a scanty currency?

In referring to the effect of a specie currency on wages, is he uninformed of facts as well as of principles? Does he not know that the condition of laborers in Russia, where the currency is nearly all paper, is worse than in almost any other country in Europe? that in Austria, where the currency is half paper, their condition is worse and their wages lower than in France? that in Cuba, to which he specially refers, where the currency is all specie, wages are very high? Does he not know that, in the countries which happen to have both, the low wages are no more owing to the specie currency than to the fertile soil or genial climate which some of them have also, but which oppression has rendered unavailing? In the inquiries which he tells us he made while in Europe into the condition of the laboring classes, did he not learn as the cause of their degradation that they are misgoverned? Did he not find that even in the least misgoverned countries the burden upon labor of public debts, taxation, and monopolies, by consuming its earnings and lessening production, exceeds every year twice the whole amount of their currencies, whether paper or specie, and fifty times the annual interest of that amount?

Mr. Webster takes all his illustrations from the condition of the laborers of England. What has that to do with the measures whose effects he is endeavoring to show? Has England an independent treasury, or even a specie currency? On the the contrary, has she not that very union of the government with a central bank which Mr. Webster seeks to bring about in this country? Has she not a half paper currency, "regulated" by a monopoly which has been twenty-five of the last

fifty years suspended, was again on the verge of failure in 1825, and has been twice in danger in the last four years, and which, although somewhat restrained by the specie part of the circulation, is still able to produce such fluctuations in the currency as to add to the other miseries of the laborers uncertainty in obtaining even their scanty pittance?

In all Mr. Webster's investigations into the condition of the laboring classes of England, he could discover not one of the institutions against which he seeks, by his references, to excite a senseless clamor. But he could have seen, if his eye could discern such things, the natural results of a government which is founded, as he said all governments ought to be, "upon property." He might have seen the effects of the spirit of monopoly which he so cherishes in this country, written in the suffering of millions of human beings.

I believe, gentlemen, that I express a sentiment common to us all, which struggles indignantly for utterance, when I say that the man who could witness what Mr. Webster describes, and, returning to our happy land, could compare the condition of that oppressed people with ours, not to warn us against the system which caused their degradation, but to urge the establishment of a great moneyed monopoly in absolute supremacy over the business interests of this country, can have little appreciation of the causes of our prosperity, and little sympathy with the principle of equal liberty, on which that prosperity is founded. He may be the appropriate agent of the stock-jobbing interests, seeking the partial and unjust advantages which they possess elsewhere; but he is unfit to guide, as he will do if his present efforts are successful, the administration of a free government.

Causes of the large reward of industry in this country.

The sources of the prosperity of our own country are obvious. The security of all classes in their property causes the most rapid growth and the most useful investment of capital, and increases the diligence and efficiency of labor. The general freedom of industry enables all to apply their labor to the utmost advantage. The

strongest inducements and the widest competition stimulate to rapid improvement. Our industry, in its infant energies, has become, on the whole, more productive than that of any other nation. But a small portion of its proceeds have been consumed by public debts and taxation, and but few monopolies have existed to change their natural distribution. The reward of labor is consequently greater than in any other part of the world. Our social order is based upon equal liberty: its fruits are prosperity, happiness, and virtue. This is our genuine American system, and the only one that deserves the name.

Absurdity of the cry, "agrarianism."

I am aware that an effort has been made, in a widely circulated pamphlet, called the "Crisis," to excite alarm for the security of property. The attempt originates in an entire ignorance of the principles which distinguish our system from the European. There, where unjust legislation has withdrawn property from the masses who have earned it, to concentrate it in the few, the plunderers may well fear lest their booty be reclaimed, — lest the physical power from which they have wrested it sooner or later rise to avenge the wrong. But here, where property diffuses itself through the masses who have produced it, and will do so more and more if its natural tendency is not counteracted by unequal legislation, property is united with the physical power of society, and rests upon the opinion and the interests of the whole people. As Mr. Jefferson said, government is the strongest — he might have added, property is the most secure — in this country of any in the world; the eccentricities of individual opinion can never endanger either. The cant cry of "agrarianism" comes in other countries from those who are themselves practising that worst species of it which takes by force or fraud from those who have little, to give to those who have much. And in this country it invariably comes from those who are seeking to establish some scheme of unequal legislation or special privilege. But here it is not merely hypocritical, it is absurd.

Now what is the effect of the Whig policy on the remuneration of labor?

1. *A National Bank*, — with powers to control or "regulate," as its advocates say, the currency and business of the country. Need I ask to which of the two systems which I have described, and whose influence upon the wages of labor I have exhibited, such an institution belongs, — to the American system of equal freedom, or to the European system of monopoly? I do not mean to say that we cannot endure a few such exceptions to the policy which causes our prosperity, if they continue to be exceptions, and we adhere to the true policy in the main; but I ask, What is the character of this institution? what are its principles and tendencies? Does it belong to the system that makes wages high, or to the system that makes wages low?

2. *A Forty-million State Debt.* — This project originated in the speculating brain of Mr. Ruggles, chairman of the Financial Committee of the Assembly in 1838, since rewarded for the invention by an appointment as canal commissioner. It was hailed with applause by the organs of the Whig party; it was sustained and enlarged in Mr. Verplanck's Report, which was understood to represent the view of the State Administration; it was adopted and commended in the strongest terms by an address signed by all the Whig members of the Legislature in 1839; and it was adopted and recommended by Governor Seward in his Message, in which he denounced the cautious prudence of the previous Democratic Administrations; asserted that the enterprises which had been undertaken had been "hard-won triumphs over the prevalent convictions of the Legislature," and declared that "the canals were a property substantially unincumbered, and that their productiveness would warrant the State in expending in internal improvements four millions of dollars annually, during a period of ten years."

Governor Seward in his last Message, amid an abundance of vague professions of economy, adheres to his former recommendations; and a recent Report, signed by all the State

officers, substantially reiterates the original project. The fallacious estimates of imaginary income on which this magnificent scheme was based have been refuted by the facts of men better informed than its author, and are abandoned; but new estimates as fallacious are substituted, and the policy pressed on to its consummation. Within the last two years stocks have been authorized to the amount of eight millions and four hundred thousand dollars. The once high credit of the State has been strained, and its bonds have been sacrificed at enormous shaves in the stock market. The works which have been begun cannot be completed with the forty millions of debt first contemplated, and the State Administration are committed to other undertakings which must still further extend the amount.

I know that it is now attempted to shift the responsibility of this scheme from its authors to the estimates of the former canal commissioners. But the truth is that the errors in their first estimate — whether arising from an improved mode, or increased cost of constructing the public works, or any other cause — were known and officially rectified before Governor Seward's approval of the scheme, which he does not even now retract!

I am aware also that it is now alleged that the Democratic candidate for governor was inclined to go too far in internal improvements at the very time when, in common with his associates, he was denounced by a Whig committee of the Assembly as "hostile to the cause of internal improvements," and the State was declared by the "Evening Journal" to be "remaining in her shell, losing rank and caste," by what Mr. Ruggles and Governor Seward pronounced "a narrow policy." But I utterly deny that he or any of his associates entertained the plan of increasing the State debt. On the contrary, Colonel Bouck's plan was expressly limited in his Report to the condition of not enlarging the debt. And this is a practical limitation of the highest possible consequence. It constitutes the whole difference between the man who should spend, perhaps unwisely, his clear income, and another man who should

exhaust the value of his farm in mortgages to supply the means of his extravagance.

3. *An Assumption by the General Government of the Debts of the States.* — I shall briefly refer to the facts which evidence the design of the men who control the Whig party to accomplish this measure.

The advance in the value of the two hundred millions of dollars of State stocks held in England and this country, by an assumption or guaranty of them by the General Government, is safely estimated at fifty millions, and forms the motive to the jobbers in both countries to effect the scheme. In May, 1839, Mr. Webster embarked for England, holding relations of connection with our leading capitalists too well known to need repetition. While there he gave to Baring Brothers & Co. a legal opinion on the constitutionality of the State stocks, dated October 16; and they issued a circular, two days after, proposing, not, if Mr. Webster pleases to make nice distinctions, an assumption in form, but "a more comprehensive guaranty than that of individual States" and "a national pledge." Is it likely that they had not entertained the plan at least two days before proposing it in their circular? or that, entertaining it, they did not confer with Mr. Webster, directly or indirectly, about it while consulting him on the same general subject? Meanwhile, on October 28, the "National Intelligencer," the Whig organ at Washington, proposed to pledge the public lands for the redemption of the State debts; and when the circular of the Barings reached this country, the "Courier and Inquirer," the "Commercial Advertiser," the "New York American," and other leading Whig papers of the Union, adopted and advocated the scheme. When Congress assembled, and resolutions were introduced into the Senate adverse to the project, the Whig members, after seeking by every device indirectly to defeat them, all, with two or three exceptions, avoided the vote on the main question, although present and voting immediately before! Why did they refuse to record their opinions against the scheme if they were

opposed to it? If they had any adequate reason for so inconsistent a course, why did they not explain it? And why did they not take occasion in debate to declare their opposition to the plan in all its various forms? Mr. Webster, when his friendship to the measure was referred to, rose and disclaimed friendship; and when his hostility was referred to, rose and disclaimed hostility; and managed, although participating in the debate, to hold himself perfectly uncommitted, expressing no opinion upon the main question! Was this the natural conduct of a man opposed to the scheme, or that of a man friendly to it, but withholding the avowal until time was mature for its consummation?

But it is said that Mr. Webster has denied the plan of assumption. I will read you the passage from his speech in New York which contains that denial: —

"But it is charged on us that we desire this assumption. I do not, however, know a man in Congress that entertained the opinion that Congress had power to assume State debts, or could if it had. It could no more assume State debts than the State of Maine or any other State could. I except from this the proceeds arising from the sales of public lands. But I say that in relation to the assumption, such as Mr. Grundy argues against, I never met the man who said that there was any such power in Congress."

Now this mode, excepted to by Mr. Webster, is the very one in which the scheme was originally proposed by the Whig organ at Washington, and by which it was sought, while essentially violating the Constitution, to preserve a decent semblance of regard to its forms — the very mode in which the scheme was advocated by the other Whig Press, discussed in Mr. Grundy's Report and in the debate in the Senate, and included in the resolutions on which Mr. Webster and his associates avoided voting! Call you this denial, gentlemen, or rather an admission? An admission under circumstances that make it full of meaning? When Mr. Webster is seeking to repel the odium of the scheme, and using the strongest language of denial, this sly exception creeps in to disclose the

design of accomplishing under some form the substance of the measure. And what matters the mere form? If the resources from the public lands are consumed, their place must be supplied by taxation. What practical difference does it make which branch of the public revenue is applied to the payment of the State debts? How much would the result be changed if the money raised by taxation should be applied to this purpose, and that from the public lands retained for the ordinary uses of the Government? Besides, the income from the public lands will not half pay the interest on these debts, to say nothing of the principal. If the Government once makes itself responsible, directly or indirectly, or adventures upon any evasion of the Constitution to effect a practical assumption, the result will be that it will have to pay the whole of the State debts; and if they are paid, they must be paid by taxation. I ask you, gentlemen, to review the facts which I have narrated, and say whether the extraordinary conduct of the Whig leaders can be explained on any other hypothesis than a design to fasten this dangerous scheme upon the country? And if the design is not now avowed, I ask you to remember that between the time when the Whig Press was openly advocating the scheme and the time when they and the Whig leaders in Congress began to play non-committal, the Convention at Harrisburg had agreed, as we are told by General Harrison's committee, upon the "policy" of concealing their intentions from the people until after the election.

I need not pause to exhibit the character of this measure,— its injustice between the States; the advantage it gives to the extravagant over the prudent; the encouragement it holds out to improvidence and unproductive expenditure in all; the temptation it offers to those who have engaged in wild and ruinous projects, which ought to be abandoned, to prosecute them further, and waste what is received from this source, or by involving themselves still deeper to increase the aggregate burden. All these effects — and worse upon the character of our government — are obvious as the noonday.

Nor need I illustrate the influence of these schemes upon the laboring masses. "A public debt," to use the strong language of a true patriot, "is a calamity and a curse, and a perpetual blight upon honest industry and productive labor." The kindred schemes of a national bank, a distribution land bill, internal improvements by the General Government, and other measures which distinguish the Whig policy, are of the same general character. They are a part of the same system of interference with the pursuits of industry and the private business of individuals, — in a word, of over-government, which curses the rest of the world; and their tendency is to consolidate power in a great central government, surrounded by magnificent establishments, and crushing by its weight the industrial masses. It was in reference to this system of policy and to the measures then supported by the present Whig party that Mr. Jefferson, in the last year of his life and during the Administration of Adams, Clay, and Webster, raised his prophetic warning. "The Federalists of our time," said he, "look to a single and splendid government, founded on banking institutions and moneyed incorporations, riding and ruling over the plundered ploughman and beggared yeomanry."

X.

THE financial distress of the country in 1840 called for an expiatory sacrifice, and Mr. Van Buren was naturally the victim. Though his popular vote for re-election in that year was larger than in 1836, when he was elected, he received only 60 out of the 294 electoral votes. Calhoun joined the Administration in this contest, — exacting as a condition of his support, however, that the Administration should oppose the passage of a bankruptcy bill, which it did successfully. This rallied several hundred thousand bankrupts to the support of the Whig candidate. Albert Gallatin is reported as saying that if Van Buren had yielded to the clamor of the bankrupt class, he would have been re-elected. The Whigs, the first winter after coming into power, passed a compulsory bankruptcy law. It was repealed, however, in a year or two by the very people who asked for it. Before President Harrison had been inaugurated, his jubilant partisans proclaimed from the house-tops that the first law to go upon the statute book under the new Administration should re-establish a United States Bank with an inviolable and an irrepealable charter. As some of the first lawyers in the country had staked their professional reputation upon the irrepealability of a charter granted with such a provision, the notion was acquiring some favor with the people. Mr. Tilden examined this doctrine carefully, and devoted some seventeen pages of the "Democratic Review" to an exposure of its unsoundness. His argument has never been successfully answered, nor has the action of Congress, refusing a new charter, ever been reversed.

IS THE UNITED STATES BANK CHARTER REPEALABLE?[1]

THE present conjuncture in our political affairs invites attention to the subject of legislative control over acts of incorporation. The combination of political factions and pecuniary interests which has attained a temporary ascendency in the Government of the Republic is striving to enthrone a powerful monopoly in absolute supremacy over all the business relations of the community. The probable success of a scheme so inconsistent with every enlightened notion of political economy, so repugnant to the fundamental principles of our civil institutions, and so fraught with practical mischief to all kinds of business, excites inquiry as to the nature and efficacy of the remedy which may be applied when the present dominant party shall have accomplished its work of evil and returned to its natural and destined minority. We design, therefore, to take a cursory review of the question of the repealability of acts of incorporation; and we shall consider it, not merely in the form in which it is presented by the case which gives occasion to the discussion, but with reference to the general principles which it involves.

The doctrine is maintained that acts of incorporation are contracts of the Government with the corporators, which cannot be rescinded except with the consent of the latter, — in the case of the States, without a violation of a positive provision of the Constitution; and in the case of the Federal Government, without a breach of the public faith.

[1] From the Democratic Review, August, 1841.

A law and a contract are in their natures essentially different. A law is a rule prescribed by a superior to an inferior; a contract is a voluntary agreement between equals. A law imports power and command in one party, necessity and submission in the other; a contract imports volition and independence in both parties.

This distinction is recognized in the acts of governments. In the conveyance of the ordinary subjects of private property by a legislature and under a law, the same formalities are employed as in such transactions between individuals. The United States grant lands by a patent, which is an instrument authenticated by the public seal and the signature of the President, and similar in its general character and formalities to a deed of an individual. The State of New York grants and receives lands by patents and deeds. In the ordinary cases of contracts between governments and individuals the usual forms of private transactions are adhered to.

An act of incorporation purports to be, not a contract, but a law; it has none of the forms of a contract, but all the forms of a law. A construction of an instrument which changes its whole character, the relations of its parties, and its legal effect, can be admitted, if at all, only on the clearest and strongest evidence. Is there anything in the case of an act of incorporation to justify the application to it of a construction so extraordinary? Is there anything in the nature of the rights conferred which has such an effect?

A corporation is a mode of association in which several persons exist and act, in law, for certain purposes, as a single individual. It is hence called an artificial person. Its ordinary incidents are, to have an uninterrupted succession of its members; to have a common name and seal, and legally to act — suing and being sued, and transacting business — by them; to hold real and personal property; and to make by-laws for its own government. Limited liability is not essential to the nature of corporations; and in very many cases, in this country and in England, is not secured to them.

The modes of commercial association are, corporations, limited partnerships, and general partnerships. Each mode has its peculiar rights and duties, capacities and disabilities. The essential difference between them is in the extent to which the principle of association enters into their constitution. In the theory of a corporation, the union of the members in a single body is complete; in that of a partnership it is imperfect. There is nothing in the faculties of a corporation more than in those of a partnership, which requires, to confer them, the exercise of a prerogative of sovereignty superior to ordinary legislation, or which makes the act conferring them of greater solemnity or of a different nature from other laws.

A statute which enables a number of individuals to transact business, and to sue and be sued as the Doe Company, is no more of the nature of a contract than a statute which enables them to transact business as John Doe & Co., and to sue and be sued jointly by their individual names. A statute which gives them the power to hold real and personal property as corporators is no more of the nature of a contract than a statute which gives them the power to do so in the same mode as partners may at common law and in equity. A statute which limits the liability of a corporator to the amount of capital invested is no more of the nature of a contract than a statute which, in the same manner, limits the liability of a special partner.

So it is with all the faculties of a corporation. They are but modes in which several individuals may exercise in common, rights which they possess separately. The corporate mode of association is more simple and convenient, less embarrassed by legal questions, and better adapted to many purposes than the partnership mode. But this difference of convenience cannot make a statute establishing the one system a mere law, and a statute establishing the other system a solemn contract. There is no reason why the advantages peculiar to corporations should not be enjoyed by all; and the tendency of recent legislation and judicial construction has been to impose on corporations

some of the liabilities of partnerships, and to confer on partnerships some of the capacities of corporations. It is difficult to conceive how a law, which should at once impart to voluntary associations any or all of the faculties which are now peculiar to corporations, could be deemed a contract, and, as such, exempted from the action of the Legislature, in case it should afterward be found to require modification or repeal. On the contrary, it is quite obvious that the whole matter is an appropriate subject of civil regulation.

Has an act of incorporation the distinctive attributes of a contract more than other laws, and in such a degree as to justify a construction which changes its whole character? Let us examine the reasoning which is employed to sustain this conclusion.

"A charter," says Judge Story, who is the author and ablest advocate of the doctrine which we are considering, "is in form and substance a contract; it is a grant of powers, rights, and privileges, and it usually gives a capacity to take and to hold property. It confers rights and privileges, upon the faith of which it is accepted. It imparts obligations and duties on the part of the corporators which they are not at liberty to disregard; and it implies a contract on the part of the legislature that the rights and privileges so granted shall be enjoyed."

A charter, in the original sense of the term, was an instrument, executed in writing and with certain forms, as evidence of things done between the parties. In England corporate privileges were granted by such instruments from the king; and the term having been adopted from that country by us, has come, by a natural association, to be applied to a statute which confers corporate privileges. The word is evidently used, in the sentence quoted, in its original sense; for it refers to the form as well as the substance of the instrument. The reasoning, however, is applied equally to acts of incorporation; for the author had just before remarked that "a legislature may make contracts or grants directly by law," and that "the question is not whether such contracts or grants are made

directly by law, in the form of legislation, or in any other form, but whether they exist at all."

A grant was an instrument, similar to the primitive *charta*, originally used to authenticate the transfer of a class of rights known in law as incorporeal hereditaments; but the term is now equally applied to the instrument (the same in all respects, except as to its subject-matter) which is used in the conveyance of corporeal hereditaments such as lands.

The chain of reasoning by which an act of incorporation is made out to be a contract is this, — an act of incorporation is a charter; a charter is a grant; a grant is an executed contract, — that is, a contract of which the object is executed; an executed contract implies an executory contract, — that is, a contract in the ordinary sense of the term, — not to reassert the right conveyed.

Without testing the tenacity of the other links of the chain, let us inquire if an act of incorporation be a "grant?" It confers rights; but does it impart them with the effect of a law, or with the effect of a technical grant? Are the rights held as civil rights bestowed by a law, and subject to be taken away by its repeal, or as property — lands, for instance — under a formal conveyance? They are bestowed by laws, and must be considered as ordinary civil rights, unless their nature is so different from the nature of such rights, and so identical with that of property, as to make a law which imparts them necessarily, in substance, a technical grant. This is the very question we are considering: we have endeavored to show that their nature does not so differ from that of other civil rights; and we have something more to say on the point.

An act of incorporation, it is said, "usually gives a capacity to take and to hold property." More accurately, it imparts a capacity to associate property in a particular form with certain peculiar powers and liabilities. This a law of partnership also does. A law enabling married women to have a separate property, or aliens to possess real estate, does more, — it actually confers a capacity.

There is a broad distinction between the right to associate property in a certain mode, and the property so possessed. The right to associate it in a corporation is no more property, in itself, than the right to associate it in a partnership. At common law, on the civil death of a corporation, its real estate reverts to the grantor, its personal estate vests in the people, and the debts due to and from it are extinguished. Consequences so unjust and injurious are no more necessary than on the termination of a partnership, and grew out of the absurd ideas attached to corporations in ages of ignorance and barbarism, — ideas from which we are not yet wholly emancipated. The Revised Statutes of New York provide that on the dissolution of a corporation, its managers at the time being, unless other persons are specially appointed, become trustees for the creditors and stockholders, with power to settle its affairs, pay its debts, and divide its surplus assets among the stockholders. This provision was taken from a conditional recognition of the right of repeal, which was inserted, after a severe contest, in an act of incorporation passed in 1822, we believe, and which established in this State (New York) the practice of making such a reservation. For this assertion of a great public right, harmonized with private interests, we are largely indebted to a man then just entering upon public life, the morning of whose career was devoted with youthful ardor to the same noble principles of which, in its meridian, he is an illustrious champion, — Silas Wright, Jr.

An act of incorporation "confers rights and privileges, on the faith of which it is accepted." So does a law which enables a man to entail his estate, to sell lottery tickets, to engage in the business of banking or insurance, or which lays protective duties, gives bounties on production, opens a new business to competition, or removes the restraint on the rate of interest. There is as much of an acceptance of "the rights and privileges" conferred, and as much of an undertaking to discharge "the obligations and duties" imposed, by the formation of a company under the act of special part-

nerships, as there is in the formation of a corporation under one of our general laws. There is as much of an investment of property on the faith of a continuance of the law in the one case as in the other. And the same thing is substantially true of all the other laws to which we have referred.

An act of incorporation "imparts obligations and duties on the part of the corporators which they are not at liberty to disregard." So do all the laws we have referred to, impose obligations and duties on those who act under them and receive the benefits of them.

An act of incorporation "implies a contract on the part of the legislature that the rights and privileges so granted shall be enjoyed." Why more than the laws which we have cited?

No feature of a contract can be pointed out in an act of incorporation which is not equally discernible in many of our laws. The same mode of construction would convert half of our statutes into irrepealable contracts, and a little additional ingenuity the whole of them. There are a few prominent cases in regard to which we have some additional comments to make.

A law imposing protective duties offers inducements for the establishment of manufactories, on the faith of which individuals invest their property. The "Compromise Act" of 1833 fixed the periods for which certain rates of duty were to continue. So definite were the expectations it created that it is often spoken of as if it were a contract to violate which would be a breach of public faith. Private interests are more deeply involved in such a law than in one conferring corporate franchises, inasmuch as a vastly larger proportion of the capital employed is invested in permanent erections, which, if diverted from their intended uses, become nearly valueless. Yet it will not be pretended that such a law is of the nature of a positive contract, or that it would not be subject to modification at the discretion of the Legislature. An obligation would exist to exercise that discretion with equity toward individuals; but the nature of the obligation would be that of a legislator, which

implies judgment, not that of a party to a contract, which is a necessity of acting according to its precise terms.

A law creating an office may be regarded as a contract, during its term, on the part of the Government to pay a specified salary, and on the part of the incumbent to render the specified services. In English law — and even in our own books — offices are classed, with corporate franchises, as incorporeal hereditaments; they are granted from the king by the same instrument, or *charta*. Like corporate franchises, they were sometimes sold; and, like them, they are by the common law a subject of property. No authority or argument can be adduced for considering a statute creating a corporation a contract which will not apply with equal force to a statute creating an office. Pressed by this reasoning, Judge Story avows the consequences; and pronounces such a law to be a contract, and, if made by a State, within the constitutional prohibition, and irrepealable during the term of the incumbent.[1]

With all deference to so distinguished a jurist, this doctrine is not American law, nor is it American practice. It has the same origin, and the same hereditary claim to our adoption, as the kindred dogma in regard to corporations; but it has not succeeded in establishing itself upon our soil. "Property in an office," says a recent American work, "is for the most part inconsistent with republican constitutions and principles."[2] The doctrine that the power which can establish an office can abolish it, and without reference to the term of its incumbent, has been acted on in numberless instances by the States and by the nation. It has been applied as well to cases in which the tenure of the office was during good behavior as to those in which it was for a limited period, and is too firmly established to be shaken.

A law establishing a public corporation is as much a contract as one establishing a private corporation. The reason for the distinction between the cases assigned by Chancellor

[1] Dartmouth Col. *vs.* Woodward, 4 Wheat. 694.
[2] Hilliard's Abridgment.

Kent, that in "public corporations there is in reality but one party," the public, is very unsatisfactory. It is a clumsy expedient to escape the logical consequences of an unsound principle. The city of New York is quite a different "public" from the State of New York. There surely is not such an identity between them as to prevent their being the parties to a contract. An act of the State imparting to the inhabitants of the city corporate capacities for municipal purposes is no less of the nature of a contract than an act of the State imparting the same capacities to individuals for commercial purposes. The corporate privileges of New York are more valuable to her citizens than those of any private association to its members, they are indispensable to the protection of a multitude of private interests, a wanton withdrawal of them would be as great a wrong, and a confiscation of the property held under them would be no less a violation of private rights. The distinction between the mere franchise and the property held under it, which is made by Judge Story in this case, we have already shown to be equally applicable to private corporations. In the English law, from which the ideas we have been combating are derived, no difference is recognized in the natures of public and private corporations, and the notions of the sanctity and inviolability of corporate franchises which we have inherited were originally and especially attached to those of a public character. If the consequences of exempting municipal corporations from legislative action would be intolerable, they result inevitably from the general principle, and are to be avoided, not by a false refinement of construction to extricate us from the difficulties in which a false refinement of construction has involved us, but by a correction of the original error.

The source of the prevalent fallacies on this subject is easily traced. Charters were originally formal grants, from the sovereign to the subject, of the most important personal and social rights, of which Magna Charta is a specimen; and they were invested with a peculiar sanctity, both from the solemnity with which they were made, and from the nature of the rights

which they secured. Even when they conferred corporate franchises, they were essentially of the same character. They erected the inhabitants of a town into a commonalty, with the privilege of having magistrates and a council of their own, of making by-laws for their own government, of building walls for their own defence, and of establishing a military discipline as a security against the lawless violence and rapacity of the age.[1] Their necessary effect in such cases was to relieve the citizens of those towns from a servile dependence on the nobles for safety; and they often contained provisions of enfranchisement, which converted them from serfs into freemen. Among the earliest of the privileges so bestowed was that of giving away their daughters in marriage without the consent of their lord, and of disposing of their property by will, or of having their children succeed to it instead of their lord.

When corporate franchises came to be valuable merely as a convenient mode for associated action for commercial or municipal purposes, the sovereign still retained the right of conferring them. He conveyed them by the same formal instrument; he made them the subject of bargain and sale; he treated them as property. But does it follow that they must, therefore, be property with us, when there is nothing in their nature, or in the act by which they are imparted, to make them such? Can they not by possibility be now mere civil rights? Must legal ingenuity be tortured to construe, into the ancient technical grant, a law conferring them? Such a doctrine is not reason; it is not law; it is abhorrent to the principles of the Constitution, which is the supreme law. The dicta of individual judges may imply it; the principles to the adoption of which the Supreme Court has been urged by the strong equities of peculiar cases may have a perilous proclivity toward such a result, — principles, the adoption of which has since cost it immense labor of constructive ingenuity to qualify and retract so as to harmonize at all with our institutions; but that Court has

[1] Smith's Wealth of Nations, by McCulloch, 203.

never yet formally adjudged that an act of incorporation passed by a State is an irrepealable contract. We venture to say that it never will do so; it is far more likely to qualify or retract still further, as it has already done to a large extent, the incautious opinions which might lead to such a step. And, meanwhile, the tendency of legislation and of popular conviction is in the other direction. The States, as New York has done, are asserting the power of legislation over corporations by statute, and inserting a recognition of it in each act conferring such franchises. And by general laws they are making these convenient faculties, with such modifications as the public welfare may require, accessible to all. They are thus carrying out the principle, which was early adopted in this country, of considering them as civil rights, and not as private property, to be imparted by ordinary laws, and not by technical grants. And they had the same right to conform to the principles of our government the tenure of existence of private corporations as they had to do the same thing — which it is confessed they have done — in the cases of officers and public corporations. They were no more bound by the obsolete absurdities of a barbarous age, or by dogmas peculiar to monarchical institutions, in the one case than in the others.

Nor is there the least cause for apprehension as to the operation of the American doctrine on this subject. Under it, corporate privileges are held by the same tenure as many of the most valuable of our individual rights. The power to legislate in the case does not imply a certainty of abuse, or a right to abuse. It is in this case, as in all others, a trust power, to be exercised for the public good, and with equity toward the individuals peculiarly affected.

We pass now from the general question of legislative control over acts of incorporation to the particular case which has given rise to this discussion. The power of Congress over a law establishing a national bank is independent of the general question; it rests on grounds which are peculiar to the case,

and which are in themselves impregnable. It is universally conceded that corporations of a public character are subject to the discretion of the legislature.

"There is no doubt," says Justice Story, "as to public corporations, which exist only for public purposes, that the legislature may change, modify, enlarge, and restrain them; with this limitation, however, that property held by such corporation shall still be secured for the use of those for whom, and at whose expense, it has been acquired. The principle may be stated in a more general form. If a charter be a mere grant of political power, if it create a civil institution, to be employed in the administration of the government, or if the funds be public property alone, and the government alone interested in the management of them, the legislative power over such charter is not restrained by the Constitution, but remains unlimited."[1]

"A public corporation," says Chancellor Kent, "instituted for purposes connected with the administration of the government, may be controlled by the legislature, because such a corporation is not a contract within the purview of the Constitution of the United States."[2]

Nor can the doctrine be sustained which was recently asserted by Mr. Berrien in the Senate, — that a corporation whose general character is public, is a private corporation because it includes some private interests. Every public corporation of whose existence we are aware does so. Even cities, towns, and counties, which are instanced by Chancellor Kent and Judge Story as public corporations, and which are such, if any exist, are admitted by the latter to "involve some private interests."[3] "With regard to political corporations," says a recent American work[4] on this subject, "it is true that they involve some private interests; yet for the reason already given, they are generally deemed public." The public corporation of the city of New York embraces more private interests than any private

[1] 3 Com. on the Con. 260. [2] 2 Kent's Com. 305.
[3] Dartmouth Col. *vs.* Woodward, 4 Wheat. 668.
[4] Angel and Ames on Corporations.

corporation in the country. The fact that the Government holds a part of the stock of a private corporation does not impart to it a public character;[1] nor does the fact that individuals hold a part of the stock, or that private interests are otherwise implicated, in a public corporation, impart to it a private character. The general nature and design of the institution must determine whether it is public or private.

A national bank is a public corporation, not because the public holds a share of its stock, but because the whole object of its creation is of a public character, and embraces private interests so far only as is essential to its efficiency as a public institution; because it is a part of the machinery of government, and exercises high political functions. On this ground only can the constitutional right to establish such an institution be claimed; on this ground exclusively was that right vindicated by the Supreme Court. We quote from the opinion of Chief Justice Marshall in the case of Osborn et al. *vs.* The United States Bank, which states the reasons of the decision in that case, and also in McCulloch *vs.* The State of Maryland, the only other case in which the constitutional question has been directly passed upon: —

"The foundation of the argument in favor of the right of a State to tax the bank is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and private profit for its great end and principal object.

"If these premises were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the Government in the transaction of its fiscal affairs would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner. But the premises are not true. The bank is not considered a private corporation, whose principal object is indi-

[1] Marshall, U. S. Bank *vs.* Planters' Bank, 9 Wheat. 907.

vidual trade and individual profit, but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the Government, is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the Court, in the case of McCulloch *vs.* The State of Maryland, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the Government of the United States.' It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes, but one which was created, in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the Government are effected, it is also trading with individuals for its own advantage. The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every other corporation, such as individuality, immortality, etc. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business."

The Chief Justice then proceeds to argue that the provisions of the act of incorporation which "authorize its banking operations" are constitutional because "those operations are inseparably connected with the transactions of the Government. They enable the bank to render those services to the nation for which it was created, and are therefore of the very essence of its character, as national instruments. The business of the bank constitutes its capacity to perform its functions as a machine for the money transactions of the Government."

Nothing can be more explicit. A national bank is either a public corporation, and, as such, subject to the legislative action of Congress, or the act creating it is unconstitutional, and, *ipso facto*, null and void.

The authority of Congress over a law creating a national bank differs from that of a State legislature over acts of incor-

poration in another important respect. The power of the State in such cases is denied, as inconsistent with the clause of the Constitution of the United States which declares that "no State shall pass any law impairing the obligation of contracts." By a forced and most unjustifiable construction, a law creating incorporations is transformed into a contract, and all future legislation on the part of a State concerning it is brought within a prohibition which, it is an ascertained fact of political history, was never intended to apply to such cases. But whatever may be the true construction of that prohibition, it does not reach the action of Congress. Of the perfect legal and constitutional competency of that body to modify or repeal, at its discretion, any act of incorporation which it may pass, there is not a shadow of doubt. The only restraint on its action is in the moral obligation to exercise this, as it is bound to exercise all its other powers, for the public good.

Nor could a case be presented more imperatively demanding the exercise of an unquestionable power than the passage of an act establishing a national bank. Such a law is in itself a violation of the Constitution, which is the most sacred of charters; and a conviction of this fact alone on the part of Congress would render its repeal an inevitable requirement of public duty.

The existence of such an institution is every way incompatible with the public welfare. It would effectually exclude from banking the principle of equal freedom, the application of which to that business is the only adequate measure of reform, and would perpetuate in it the principle of monopoly, which has caused all the evils of the present system, and written its history in human suffering. It would concentrate in a few irresponsible capitalists a control over every man's business and every man's property which is utterly inconsistent with individual rights, and ought not to be tolerated in a community of freemen.

The successful establishment of a national bank, moreover, would be the consummation of a great public fraud. Through-

out the recent political canvass the Whigs emphatically repudiated any design, in case of their success, to create such an institution. They selected as their candidate for the Presidency General Harrison, who was known to have denied its constitutionality, and who never conceded more to it than to say that he would yield his objections to a clear indication of the public will, and as their candidate for the Vice-Presidency Mr. Tyler, who was more thoroughly committed against such an establishment than almost any other man in the country. In Virginia the address of their State Convention advocated General Harrison's election on the express ground of his hostility to such a scheme; and in North Carolina Mr. Badger, a member of the present Cabinet, in a speech of which a hundred thousand copies were circulated in that State, emphatically denounced the "charge" against him of being friendly to it as "false." In New York Governor Seward had, in a public message, hesitated opposition; most of the leading Whig presses and speakers of the State disclaimed the measure; and in the agricultural districts, the assertion that the success of the Whigs would eventuate in its adoption, was treated as a calumny. Even Mr. Clay, who had been an uncompromising advocate of a bank, conceded something to the public sentiment; in his speech at Hanover he condescended to express an unaccustomed doubt, and to say that if an adequate substitute could be found, which he still thought could not be, he was ready to acquiesce in its adoption.

And yet the success of candidates holding such sentiments and advocated on such grounds, is now claimed to be an instruction by the people in favor of the very measure repudiated, so authoritative as even to preclude all discussion of its propriety! And the monstrous pretension is asserted of a right to foreclose the question against an appeal to the public will, and to fasten on the country, beyond the control of future representatives and of the people themselves, a governmental machinery which can be constitutionally established, if at all, only as a public institution, but which, once established,

becomes sacred as a private contract! If such a double fraud could be successfully executed, the forms of popular government would be a wretched farce.

Unquestionable as is the right to repeal a law creating a national bank, and imperative as are the considerations which demand the enforcement of the right, it should be exercised with a careful regard to the interests of individuals. The act which withdraws from the institution all its public franchises should secure to its stockholders the property they have invested, and should leave to it the powers necessary to the settlement of its affairs; and an ample and seasonable notice should be given, by the minority, of their intention to appeal to the people on the question, so that the individuals who may afterward voluntarily implicate their interests with the institution shall do so subject to the popular decision, and shall have as little reason to complain of the exercise of the right of repeal as we have shown that they have to deny its existence.

Upon the issue thus made up the Democracy must solemnly appeal to the people to repudiate an institution which is incompatible with the common welfare and with individual rights; to assert the supremacy of their will over the machinery of government and over their own servants; to rebuke a detestable and dangerous public fraud; to vindicate equality against privilege; and to reclaim to themselves rights without which they cannot be free.

XI.

DURING the excitement which grew out of differences between certain large landholders in the State of New York and their leasehold tenants, Mr. Tilden was a candidate for election to the Assembly of 1845. In the course of the canvass the following letter in relation to the distribution of the public lands was written in reply to inquiries from some of his constituents. James K. Polk had just been elected President of the United States,[1] and Silas Wright Governor of the State of New York.[2] Mr. Tilden was an intimate personal and political friend of Governor Wright.

[1] Inaugurated March 4, 1845.

[2] Inaugurated Jan. 1, 1845.

THE PUBLIC LANDS, AND WHAT TO DO WITH THEM.

NEW YORK, Oct. 27, 1845.

GENTLEMEN, — I have received your note addressing to me an interrogatory in regard to the disposal of the public lands. Since you have nominated an independent ticket representing your opinions on this question, and your note expresses no intention, in any event, to support any other, I may assume that you will not vote for me, in whatever way I may answer your inquiry. Nevertheless I have no objection to state to you my sentiments upon this subject.

Government, it seems to me, should make the wild lands which it possesses or may acquire neither a means of speculation nor a source of revenue. It should hold them as a trust for those who may desire to subdue them to the uses of civilized life. The actual cost of bringing them within a jurisdiction and into a condition in which they may be safely and conveniently occupied by settlers — in other words, the expense of executing the trust assumed by the Government for the settlers — will be in the first instance a charge upon the industry of all the people; and inasmuch as it would not be equitable to tax those who may prefer to remain in New York in order to procure farms for those who may prefer to remove to Iowa, that cost should be reimbursed. Except the expense thus incurred for the settlers to enable them to occupy, the lands should be theirs without price. If the public domain should not be made a source of profit to the Treasury, still less should it be allowed to become such to private specula-

tors. The accumulation of large quantities of it in few hands tends to postpone the settlement and retard the prosperity of the new States; to obstruct a resort by those who in our denser populations may find subsistence difficult, to communities happily formed of small agricultural proprietors; to create monopolies of soil and tenures unfavorable to the growth of States and the happiness of individuals. To avoid these evils the land should be disposed of as far as possible in suitable quantities to actual settlers, restricted to their use, and not for speculative transfer.

Such are the general views which I have ever entertained on this subject, and which I do not hesitate to express, although they are applicable rather to the General than the State Government.

Respectfully yours,

S. J. TILDEN.

MESSRS. JOHN COMMERFORD, EGBERT S. MANNING,
MICHAEL T. CONNER.

XII.

THE first grants of land within the limits of the present State of New York were made by the States-General of Holland. They secured very large tracts to such "patroons" as made actual settlements within a limited time. Valuable privileges were also conferred upon these proprietors, the design of all which was to introduce the manorial or baronial system of feudal Europe. When the colony was transferred to the English Crown, the same policy was pursued by the British Government, and also by the French in their more northern possessions. These lands were let by the proprietors upon perpetual leases, with certain reservations common to most old feudal tenures. Rents were payable in wheat or other products of the soil, poultry, and personal services of men and teams. All mill privileges, mines, minerals, and rights of way, besides many other incidental advantages, were reserved to the proprietor.

Most of the land in the counties of Albany and Rensselaer, and very considerable tracts in the counties of Columbia, Greene, Ulster, Sullivan, Delaware, Schoharie, Otsego, Montgomery, and Schenectady, were let upon perpetual leases of this character. As the State became more populous, and land and its products more valuable, the pernicious influence of these tenures became more manifest and oppressive. Disturbances of a serious character broke out as early as 1757, the more or less frequent recurrence of which marks all the subsequent history of these holdings. Stephen Van Rensselaer, the patroon, or proprietor of the Manor of Rensselaerwyck, died in 1839. His was one of the largest landed estates in the country at that time, comprising a tract some twenty-four miles long and forty-eight miles broad, and lying on both sides of the Hudson River. It was found by his heirs that tenants of the estate were largely in arrears for their rents. Attempts were made to enforce the collection of these rents. The tenants resisted. They established armed patrols, and by the adoption of various disguises were enabled successfully to defy the civil authorities. Eventually it became necessary to call out the military, but with results only partially satisfactory. These demonstrations of authority provoked the formation of anti-rent clubs throughout the manorial districts, with the view of acquiring a

controlling influence in the Legislature. Small bands, armed and disguised as Indians, were also formed, to hold themselves in readiness at all times to resist the officers of the law whenever and wherever they attempted to serve legal process upon the tenants. The principal roads throughout the "infected district" were guarded by these bands so carefully, and the animosity between the tenants and the civil authorities was so intense, that at last it became dangerous for any one not an "anti-renter" to be found in these neighborhoods. It was equally dangerous for the landlords to make any appeal to the law, whether for the collection of their rents or for the protection of their persons. When Governor Wright entered upon his duties at Albany in January, 1845, he found that the Anti-rent party had a formidable representation in the Legislature, and that the questions involved were assuming almost a national importance. The grievances of the tenants could not be wholly denied, neither could the means of redress to which they had resorted be tolerated. The problem was full of difficulties: but the time had come when it had to be grappled with and definitely solved; it could be dallied with no longer. It was treated at great length in the Governor's Message; and at an early stage of the session of 1846 a special committee was appointed to examine and report upon the grievances upon both sides, and, if possible, to suggest a remedy. Mr. Tilden, who was a member of the Legislature and a native of Columbia County, which was one of the manorial districts, was named chairman of the committee to which this delicate subject was intrusted. His Report, which follows, was the basis of the legislation which resulted, and which, in putting an end to the discontents in the anti-rent districts, took the subject from that time forth out of politics. This report contained the first denial by any considerable authority of the validity of quarter and other proportional sales which had been regarded as good by the Bar and by the courts. It led to a re-examination of the question, and the law was finally settled that all such agreements are void. The form of the leases containing such reservations was said to have been drawn by Alexander Hamilton. The statute of the State of New York of 1787 concerning tenures was drawn by Samuel Jones, father of the second Samuel Jones, who succeeded James Kent as chancellor of the State, and grandfather of the present Judge Samuel Jones of the New York Superior Court.

THE ANTI-RENT DISORDERS.

REPORT OF THE SELECT COMMITTEE ON SO MUCH OF THE GOVERNOR'S MESSAGE AS RELATES TO THE DIFFICULTIES EXISTING BETWEEN THE PROPRIETORS OF CERTAIN LEASEHOLD ESTATES AND THEIR TENANTS, ETC.

MR. TILDEN, from the Select Committee to which was referred so much of the Message of the Governor as relates to leasehold estates, the difficulties between the proprietors of them and their tenants, and the remedies proposed, and also sundry petitions and certain bills in regard thereto, with instructions of inquiry as to certain other measures, reports,—

That, impressed with the importance of the subject as well from the number of persons and magnitude of interests affected as from its relations to the tranquillity and prosperity of the State, your Committee have given it all the consideration allowed by their other duties in the period to which they felt confined by their desire for action upon it at the present session. Solicitous to learn from the numerous petitioners their grounds of complaint and their views of remedies more fully than were exhibited in their memorials, your Committee, meeting for this object with the Committee of the Senate, heard for three days statements and explanations from delegates appointed for the purpose from the several counties. The proprietors of the manor of Rensselaerwyck also attended by counsel. Representatives of the tenants appeared from the counties of Albany, Rensselaer, Columbia, Schoharie, Schenectady, Montgomery, Greene, and Delaware.

From their statements, and from information derived from other sources, your Committee are enabled to give a general

view of the extent and location of the principal leasehold estates, the nature of their various tenures, as well as the evils complained of, and the remedies desired.

The manor of Rensselaerwyck, it is well known, as claimed and possessed by its proprietors, comprised a tract of country extending twenty-four miles north and south, and forty-eight miles east and west, lying on each side of the Hudson River, and including nearly all of the counties of Albany and Rensselaer. Most of the lands in it are still held under perpetual leases, or, more correctly speaking, grants executed generally from thirty-five to sixty years ago. It does not appear that any, except a few in the County of Rensselaer for sixty years, which are now about to expire, are for a different term. Of those in the County of Albany about one half contain a reservation of the quarter sale, and the other half a year's rent extra upon each alienation; and without particular information as to those in Rensselaer County, there is no reason to suppose that they much differ in this respect. The rent in the towns of Rensselaerville, Westerlo, Bern, and Knox, in the County of Albany, is generally about fourteen bushels of wheat for a hundred acres, and four fat hens and one day's service, with carriage and horses, to each farm of one hundred and sixty acres. In the towns of Bethlehem, New Scotland, Guilderland, and Watervliet, which were earlier settled, it is generally ten bushels of wheat to a hundred acres, and four fat hens and one day's service to each farm, whatever be its size. The exact legal character of the instrument, and the nature of the other reservations, will appear by a blank form of the kind generally used, which is hereto appended; other particulars in regard to the leases in the County of Albany, as well as the terms on which the landlord offers to sell out his interests, are shown by the statement of his agent, which is also annexed.[1]

[1] [The instruments and contracts referred to in this Report are omitted, as their contents, having ceased to be matters of controversy, are set forth with sufficient particularity in the text. They may, however, be found at length in the New York Assembly Documents of 1846. — Ed.]

In the County of Columbia is the manor of Livingston, extending ten miles on the Hudson, fourteen on the east line, and twenty and a half east and west from the Hudson to Massachusetts, including Germantown, which was conveyed at a very early period. Upon how much of it the interests of the landlords have been extinguished your Committee were not definitely informed; but their impression is that nowhere is the extinction of the leasehold tenures going on more rapidly. Of the leases now existing it was stated by the delegates that a few are in perpetuity, or for ninety-nine years; but the great mass are for lives, — occasionally for one, or three, but generally for two lives.

An original lease from Mary Livingston, executed Jan. 1, 1825, was inspected by your Committee. It is for two lives; it reserves a rent of twenty-three bushels of wheat and four fat hens on one hundred and ninety-eight acres, and all waters and water privileges and minerals, and covenants against alienation without consent of the lessor, and then for a tenth sale to pay taxes, etc.

A second one, executed in 1818, differs very little from the first lease, except that the rent is sixteen dollars and four hens for ninety acres. One from Henry W. Livingston, executed April 16, 1797, is very similar, except that it reserves a fifth sale, and sixteen bushels of wheat and four hens for one hundred and sixty acres. One from Robert Swift Livingston was executed Feb. 16, 1837, for one life. In this the rent is twenty-six dollars for one hundred and fifty-two acres; it is covenanted that no alienation shall occur without consent, and then one eighth of the proceeds shall be received by the lessor and seven eighths by the tenant. A form of the perpetual lease used by Henry W. Livingston was also examined, and was found in no respect, except its term, different from the ordinary short lease.

An original lease, granted by Robert Livingston, Jr., in 1772, and assigned by indorsement in 1801, was also inspected by your Committee; a copy of which is appended, as illustrat-

ing an important element of the popular antipathy to leasehold tenures in their traditional associations.[1]

In this county, too, is the John I. Van Rensselaer tract, which was stated to be very large. An original lease, executed by him in 1791, is perpetual, and is very similar in form to the quarter-sale lease on the manor of Rensselaerwyck. The rent reserved in it is fifteen bushels of wheat for ninety-one and one half acres.

In the County of Schoharie is Scott's patent, which was stated by the delegates to contain fifty or sixty thousand acres, including large parts of the towns of Broome, Conesville, and Middleburg. It was granted to John Morin Scott and others, and is now owned by the heirs of John Livingston, some of whom, it was said, offer to sell at high prices, while the others will not sell at all. The leases are for two lives, reserving a rent of fourteen dollars on a hundred acres.

In this county also is the Blenheim patent, which, as was learned from another source, contained originally forty thousand acres. It was sold on confiscation in about 1779 to John Lansing, Jr. Upon about one half of the tract the interests of the landlords have been extinguished; and of the residue seventeen thousand acres owned by John A. King are under leases in fee, reserving a rent of generally fifteen dollars on a hundred acres, and without other conditions, except the covenants to pay the taxes and of distress and re-entry. There are a few instances of wheat rents, which are commuted at one dollar a bushel. The proprietor, it is stated, offers to sell his interests for a sum which at 6 per cent will produce the rent.

In the County of Schenectady is the Duanesburg tract, containing, as was stated by the delegates, about sixty thousand acres. It is mainly under perpetual leases, the oldest of which were executed fifty or sixty years ago, and which reserve a rent of fifteen dollars on a hundred acres, and mines and water privileges.

[1] See note, p. 193.

In the County of Montgomery is a part of the estate of George Clark, containing, as was stated by the delegates, twelve thousand and seven hundred acres, or one half of the patent granted in 1736 by Lieutenant-Governor Clark to William Corry and others, and lying in the towns of Root, Charleston, and Glen. The old leases were for three lives and not less than thirty-one years, and reserved, as was stated, a rent of twelve and a half dollars on a hundred acres, with a reversion of all improvements. About one third have expired, and many of the others are held upon a single life. Renewals are offered at from thirty-seven to one hundred dollars on a hundred acres for a specified long term, but subject every year to an indorsement of the consent of the landlord to their continuance on his judgment that the conditions and covenants of the tenant have been fulfilled.

In the counties of Schoharie, Otsego, Herkimer, Oneida, and Delaware are tracts held from George Clark of which your Committee have not particular information, but which are believed to be generally for three lives at a rent of sixpence sterling per acre. Of those which lie in Stamford and Kortright in Delaware County it was stated that they are near expiration, and that on renewal forty cents per acre rent is required.

In the County of Greene there remain some two thousand acres under leases from the late Edward P. Livingston, some of which are in fee and the others for three lives, and which reserve a rent of from sixteen to twenty bushels of wheat on a hundred acres; and a tract of twenty-five thousand acres, about half of which is stated to be under leases in fee from the late James Desbrosses, at a rent of one shilling per acre, of the other half of which definite information was not received.

In the County of Ulster is a tract of about seven thousand acres, owned by the heirs of Robert R. Livingston, and leased for three lives, at twenty bushels of wheat on a hundred acres.

In the County of Sullivan there is a tract of about five thousand acres, owned by heirs of R. R. Livingston, under leases in

fee and for three lives, and at a rent of from fifteen to twenty bushels on a hundred acres; and a tract of about fifteen thousand acres under the Desbrosses lease.

In the County of Delaware is the Kortright patent, containing about twenty thousand acres. Most of it is still held under leases in fee, at a rent of sixpence sterling per acre. The proprietors offer to sell at two dollars per acre.

Of some portions of the Hardenburg patent more particular information has been received.

The Desbrosses tract contains about sixty thousand acres, most of which is still under leases in fee, given between 1790 and 1807, and reserving a rent, after seven years, of one shilling per acre. The farms are usually from one to two hundred acres in size.

Of one tract of twenty thousand acres, about fifteen thousand are under perpetual leases from the late Morgan Lewis, at a rent of twenty bushels of wheat, after the first fifteen years, for five of which it was nothing, for five one half, and for five three quarters of that amount.

Three tracts of the late Gulian and Samuel Verplanck contained originally fifty thousand acres, of which less than twenty thousand are now under leases. The rent on about one half is at fifteen bushels of wheat on a hundred acres, which is commuted at one dollar per bushel, and the rest at from fourteen to twenty dollars on a hundred acres. The latter has been offered for sale at two dollars eighty-six cents per acre.

Two tracts, of about twenty thousand acres, remain under lease from R. R. Livingston and Mrs. Montgomery. The leases are generally perpetual, reserving a wheat rent of twenty bushels on a hundred acres.

A tract of about eight thousand acres is under lease from General Armstrong for three lives, at a rent of twenty bushels of wheat on a hundred acres.

The leases of Hunter and Overings, which cover extensive tracts in Delaware, Sullivan, and Greene counties, are in fee, with a warrantee, reserving a rent of from twelve and a half

to fifteen and occasionally eighteen cents an acre, and with only the usual covenants of re-entry and distress, and for the payment of taxes. In some of them the first seven years are free from rent; in others, the first five, the second five at half, and the third five at three quarters rent.

The leases of Goldsbrow Banyer, inspected by your Committee, were, one for three lives and not less than thirty-one years, reserving forty bushels of wheat on one hundred and ninety-seven acres lying in Otsego County; and the other in fee, reserving thirty-four bushels on one hundred and seventy-one acres lying in the north part of Rensselaer County.

The evils complained of by the petitioners, their grounds and nature, have been so fully presented in documents already before you that it is not thought necessary to repeat them, further than to express the conclusions to which their consideration has led your Committee, and which are applicable to the question, as one of public policy and legislative interposition.

Of the unfavorable influence of the leasehold tenures upon the agricultural prosperity and the social condition of the communities where they exist, your Committee entertain no doubt. Experience and observation — the gradually formed and thoroughly established convictions of those who are subject to them and those who are free from them — of all who compare the effects of this system and the proprietary system in contiguous localities, and in farms intermingled side by side in the same locality, has settled the question, and, as your Committee believe, has settled it in conformity with truth.

It has indeed been urged that the lengthened or perpetual credit allowed to the settler for the purchase-money of his farm, with an exemption from interest or rent for a period of generally seven years, formed terms unusually favorable to him, conducing to his immediate prosperity and domestic comfort, amid the struggles and hardships incident to his condition, as well as securing the early occupation and cultivation of the lands. All this is no doubt true; but it by no means follows that the ultimate and permanent effect of the credit — contin-

ued beyond the immediate benefits which it certainly did confer — was salutary. On the contrary, it is more than probable that this is another of the frequent instances in which a credit — convenient or useful at the time — becomes, in its remote and general effects, an injury.

Nor, if it could be shown that the rent was but a moderate interest on the market value of the wild lands, or even less than the rate at which the principal could be employed, would the conclusion be warranted that such a perpetual charge, universal in a community, is a good, or that, upon the whole, anything was gained by accepting it in exchange for the unalleviated difficulties which ordinarily attend those who form a new settlement.

The mere idea of proprietorship is a valuable element of the individual and social character of the agricultural population of this country, inculcating habitual self-respect and self-reliance, elevating the moral and mental dispositions, and enlarging the capacities for action, cultivating at once a manly sense of individual independence and a generous subordination to the collective will. The diminished influence of this idea would naturally be the more felt in a community which saw itself, in this respect, an exception to all those by which it was surrounded, — and where, too, the sense of dependence was made the more offensive by traditional associations of degrading incidents, now removed, to a relation which still continued and seemed likely to be perpetual.

It may well be doubted, too, if an endless indebtedness, on the most favorable terms, is not a greater evil than the necessity of payment at any reasonable period. Industry and frugality are qualities not certain and invariable; and, under the stimulus of a desire to escape incumbrance and attain independence, they often enable individuals, after all the sacrifices necessary to accomplish the object, to improve, in other respects, their condition.

In the present case, in addition to the restraints on alienation imposed in many of the leases, serious impediments have

existed to a free exchange of the lands in the inconvenience and legal embarrassments which surround such transfers, and which tend to restrain labor from seeking, through shifting employments, its most advantageous application, and to repress the disposition, the habit, and the opportunities of enterprise.

The repugnance to this tenure among those who are accustomed to the proprietary system has not been without influence to keep the farms in the same hands and to discourage the accession to these communities of the more valuable classes of emigrants from the older States. Nor can it be questioned that the inclination to make improvements is impaired if the sense of ownership is not complete. And while the effect may be small where the lease is perpetual, it increases as the permanency of the term diminishes; and where the lease is for lives or a long period of years, becomes incompatible with improvements of a permanent nature, and almost with successful husbandry. The principle applies until we reach the case of leases from year to year, or for short terms, or, what much oftener occurs, letting out on shares, in which the tenant or farmer is not expected to make improvements, unless specially stipulated, and the owner exercises, personally, the care and faithful supervision which ownership alone can be relied upon to inspire. The relation existing in such a case is of a nature wholly different from that which we have been considering, and is more analogous to the management of an estate by its proprietors through hired agents or assistance. It does not exist extensively, and in its adaptation to the peculiar and temporary circumstances of the parties, no doubt exists beneficially; but it cannot, for obvious reasons, become general as a system of tenure.

The dissatisfaction which has arisen in the parts of the State where the leasehold tenures prevail is traceable to the aversion common to our people to the system, and to special causes which concurred to inflame this sentiment into a deep, pervading, and vehement excitement.

The late Stephen Van Rensselaer, while refusing to sell the lands, was generally remiss in the collection of his rents, and in particular instances, from an unwillingness that the objects of his partiality should suffer inconvenience while he lived, permitted the arrears to remain and increase for a very long period; forgetting that such delay of payments — which perhaps could have been made gradually, but which, accumulating without the habit of providing for them at the time, became burdensome, if not impossible — was, if they were ultimately to be exacted, an indulgence fatal to the object of his mistaken kindness. It is understood that these arrears amounted at the time of his decease to nearly four hundred thousand dollars, which he bequeathed in trust, to be collected and applied to the payment of his debts, but with authority to make remissions in cases of utter inability, poverty, or misfortune, etc., and that the debts so charged upon these arrears were of an almost equal amount.

After his death disquietude was naturally felt lest collections should be enforced, attempts to induce payments were made, and much apprehension prevailed. The rents had been largely increased for several years before by the extremely high prices of wheat, which was no longer produced on the farms, and had to be commuted in money. Efforts to buy out the landlord were made, but the parties could not agree upon the terms; and the commissioners appointed by the State the year after to effect a compromise reported the different propositions, which, with their comments, are appended.[1]

The failure to effect an adjustment is perhaps to be ascribed, more than to the unreasonableness of the parties, to the provisions of the will by which the remissions of the arrears did not come from the general estate, and the fact that the landlords were unfamiliar with the habits of thinking of the tenants and unaccustomed to the compromises which belong to business; while no counsel or agent acting for another could exercise the plenary discretion necessary to effect a settlement.

[1] See note to page 193.

The dissatisfaction which thus arose allied itself with the general hostility to these tenures and with the popular sympathies, and spread over the whole region where such estates are found. The deplorable excesses to which the excitement led, in some instances, need not be recounted, and will not, it is confidently believed, be repeated.

General and earnest attention is now drawn to the subject; and it is due as well to the number and character of the petitioners as to the importance of the questions in reference to the present interests and future policy of the State, that the matter should undergo a thorough investigation, and that any measures consistent with the rights of private parties and with constitutional limitations should be adopted to remedy the evils complained of, and to obliterate relations which are inconsistent with sound public policy.

The measures prayed for in the petitions and proposed by the representatives of the tenants who appeared before your Committee are: —

1. A taxation of the interests reserved in leases of long terms.
2. An abolition of distress for rent.
3. A law enabling the tenant to dispute the title of the landlord under which he obtained and holds possession.

After a careful examination of the subject, your Committee have come to the conclusion that leases in fee, for lives, and for long terms, are, under the general principles of taxation adopted in this State, proper subjects of assessment, and have amended the Bill for that purpose which was referred to them.

Under our present laws, all debts incurred for the consideration of lands sold, whether resting in mere personal responsibility, or charged upon the lands, or both, are taxable as "debts due from solvent debtors." Mortgages, whether the land is the only security, or there is also the personal security of a bond, and contracts for the sale of lands, with possession, but not title conveyed, whether or not the lands are the only guaranty for payment, are instances of this kind. In the case of the mortgage, the legal title is held to be in the buyer; and

in the case of the contract, is in the seller. In both cases the debt to the seller is taxable to him as personal property, even although the lands are also taxed — in the former case by operation of law, and in the latter by agreement between the parties — to the buyer.

A lease or grant of lands in perpetuity is, in substance, even if it were not, as it is, in legal classification, a form of sale; and there does not seem to be any reason why the consideration in this case should be exempt from the principle which applies in all other cases.

The instruments of this kind which your Committee have examined are, in language and legal import, conveyances with the consideration-money secured in them by provisions in the nature of a grant from the buyer of an annuity or rent-charge. If, as in some instances, there is no clause expressly giving the remedy of distress, the rent is merely personal property; and even with such a clause, its nature is so much of personalty that the courts have not gone further than to deem it real estate for certain purposes. The transaction is more analogous to the case of a conveyance with a mortgage back for the consideration, than of a contract where the title has not passed.

It would be questionable whether the consideration-money secured upon lands, with its interest payable as rent, would not be fairly included in the general tax law, if the contrary intention of the Legislature had not been manifested in striking out the word "rents" from the enumeration of the particular subjects of taxation in the original draft of it reported by Comptroller Savage. The revisers seem, in their note to the sections of the Revised Statutes which re-enacted the law of 1823, to intimate the opinion that rents are included. In that note the revisers suggest that in all cases of mortgages, contracts, or rents where the land is the only security, as the occupant is taxed for the full value of the land as if the title were absolute, if the debt secured in these various forms on the lands is also taxed to the other party as a "debt due from a solvent debtor," there will be "double taxation."

If it were possible to ascertain with certainty what debts are for consideration-money and without other security than the lands sold, it would not follow that to tax the lands to one party, and the debt charged upon it to the other, would be double taxation; for the occupant of the lands is entitled to deduct the debt so charged from the assessment of his personal property. It is only to the extent to which such a debt may exceed the amount of his personal property that any double taxation can occur; and in that case the excessive taxation results, not from the taxation of the debt really held as personal property by the seller of the lands, and justly taxable to him, but from the fact that the law does not permit debts to be deducted from the amount taxed as real estate to the buyer.

It has been the settled policy of this State, for reasons which need not be now discussed, to allow debts to be deducted from the assessment of personal property, but not of real estate. In the single case in which a person taxed for real estate owes debts larger than his personal property, he is, to the extent of such excess, over-taxed. Whether this over-taxation of the occupant is but one of those inequalities unavoidably incident to the operation of a salutary general rule upon a peculiar and not very frequent case, or whether it is a defect which could be remedied without greater evil, is wholly immaterial as far as the other party is concerned. He actually has the debt in the form of a mortgage, contract, annuity, or rent-charge, which is beyond any question a proper subject of taxation to him; and if it be conceded that one individual is, in some instances, taxed too much, that fact forms no reason why, in order that the aggregate of the taxes upon the two should be exactly the proper amount, another individual should be taxed so much less than his share; still less why a general rule of exempting him from just taxation, extending not merely to these peculiar circumstances, but universally, should be adopted. On the contrary, as the total amount to be raised is the same, however it be distributed, an exemption of one of these parties from his proper share of the taxation increases the share falling upon the other, who is already over-taxed.

To illustrate the effect, suppose one half of the inhabitants of a town were occupants of farms worth each $10,000, and the other half held mortgages or securities of any kind upon these farms for $5,000 each; that both classes were without any other property; and that the amount of taxes to be raised was such as would, if the mortgages were not assessed, impose 1 per cent on the value of each farm. The parties are each of them worth the same amount, and ought to pay taxes equally, or $50 each. If the real estate is taxed according to our present rules, without deducting the debt upon it, and the mortgage is also taxed according to the present proposition, each occupant would pay $66, and each person holding a mortgage, $33. But if because the occupants are each taxed for $10,000, notwithstanding they owe $5,000, the mortgage is exempted, in order to accomplish an imaginary uniformity, the occupants will be taxed $100 each, and the holder of the mortgage nothing. The theoretical propriety of not taxing the same property twice may thus be attained, but a great practical inequality will be committed. The taxation of debts secured on lands, however it may, in reference to excessive taxation of the occupants of the lands, under some circumstances be called "double taxation," is really, in the language of the Comptroller, but "an equitable distribution of a common burden among the several members of the community who ought to bear an equal portion of it," or rather an approximation to such a distribution, in which, after all, the party so taxed pays less than his just proportion.

The only real question is as to the intention of the parties to the contract in regard to the tax proposed. It may be assumed by one party that the design of the lessor or grantor was to reserve a rent on annuity free and clear of any tax, and that the lessee or grantee expected to pay taxes of any kind and in any manner laid upon the lands specifically. But it is not probable that either party distinctly contemplated such a tax as is now proposed to be laid, or intended anything more than to provide that the occupants of the lands should

pay all of the taxes which would fall upon the owner, and which an ordinary conveyance would transfer to the purchaser with the legal title, but which, in a contract for sale or a grant subject to a charge or rent, might not be transferred without express stipulation, or at least without embarrassing questions as to the actual charge. To include every peculiar form of such taxation upon the lands, the language of the instrument is general and comprehensive; but it does not necessarily include taxes which the sovereignty of the State may, in its good pleasure and sound discretion, lay upon that grantor as his just contribution toward the expense of government, even if it estimates among his property any source of revenue he may have in the nature of a reservation or grant back in a lease, of a mortgage for consideration-money, or of a contract for a conveyance, and which it chooses to adopt as the rule of apportioning the tax upon him.

If, then, these leases are, according to established rules, proper subjects of taxation, they ought not to be exempted, and especially as such legal preference tends to encourage investments which have been found so contrary to just public policy. Leases for lives, and for terms deemed to be equal to a life, seem to fall so far within the reasons applying to leases in fee as to be likewise subjected to assessment.

In imposing these taxes it has been deemed proper to depart from the ordinary rule that personal taxes follow the person, and to lay the tax where the lands are situated. The ordinary rule has been established from its superior convenience, and from its general and substantial equity, as between the several localities affected. But when so important an exception exists as of whole counties permanently indebted to non-residents, it seems proper that the rule should be adapted in this, as it has been in other instances, to the peculiar facts to which it must apply. And in all these conclusions the consideration has been borne in mind that the taxing power is one which may be, and has been, exercised with liberal, although just discretion, and that it is more wisely and rightfully exercised when it aims to apportion the burdens of government, not

according to a fanciful uniformity, but according to substantial and practical equity.

Your Committee have not learned that the remedy by distress is much employed on the leasehold estates; on the contrary, it appears, except upon one or two tracts, to be infrequently, if ever, resorted to. And yet, upon general grounds of policy, they see no reason why it should not be abolished. It is regarded as an invidious distinction in favor of a particular class of creditors which has survived similar remedies applicable to other debts. It is odious to those who are subject to it; sometimes operates unjustly toward other classes of creditors who are equally entitled to protection; and, since the enlargement of the exemption from distress and execution, is not of much utility to the lessors in the cases in which it was formerly most frequently employed.

The argument for its retention is that it enables the tenant more conveniently to secure a tenement, which is his first necessary; but if, as is believed, he does not generally regard it as a benefit, but rather as an offensive discrimination, your Committee do not deem this a case in which to overrule his judgment on an imaginary notion of advantage which the party interested disclaims.

As far as this remedy is in any case given or aided by statute, it is, if the contract to which it applies be not left without other substantive and adequate remedy, within the control of legislation; and if it still exists after the assistance of law is withdrawn, by the mere force of express covenant it will not be likely to be much resorted to, if indeed it does not become wholly inoperative.

Assuming, for the purpose of this discussion (erroneously, as your Committee think), that the instruments existing in the cases which give rise to this controversy are ordinary leases, it is proper to consider the character and legal consequences of the Bill referred to your Committee, entitled "An Act concerning Tenures."

A difference of opinion as to the true construction of the last clause of this Bill exists among your Committee. The

opinion is entertained by the majority that it would, in effect, give the tenant an adverse possession, and consequently, in cases where the tenancy has existed more than twenty-five years, a conclusive possession; but as that is not the design of the Bill, and if it had been in other respects approved it would have been unanimously amended to remove any doubt as to its legal effect, that point is not deemed to require any comment. Aside from this, the material provision of the Bill is that which withdraws from the lessor the effect of time in confirming his title under the general laws of this State. The Act of Feb. 26, 1788, declared that after January, 1800, the State would bring no action to recover real estate unless its title had accrued within forty years before the beginning of the action, or it had enjoyed the rents or profits of the real estate within that period. It declared that as between private persons, no action for the recovery of real estate or its possession should be maintained unless the right arose, in some cases, within twenty-five years, and in other cases within twenty years before the beginning of the action; and it declared, in the formal and full technical language of the covenant for quiet enjoyment, that all persons claiming or having the real estate to which the Act applied should "at all times hereafter, quietly and freely, have, hold, and enjoy against the people of the State of New York . . . all and singular the manors, tenements, and hereditaments whatsoever," so claimed or had; and that, as between individuals, every person who did not bring his suit within the time limited should be forever barred. The Act of April 8, 1801, substantially re-enacted these provisions. The Revised Statutes, which took effect on Jan. 1, 1830, simply shortened the limitations, both as against the State and in all cases against private persons, to twenty years; but being only prospective in their operation, they do not affect rights existing previous to their passage.

These Statutes apply to all titles of real estate, whether the possession be in the person who holds the title, or any other person, if, either by intendment of law or contract between the

parties, that possession be under the title, and whether it be a case of mortgage, trust, grant, contract for a conveyance, or lease. In the case of the lease this principle, which had always existed in that as well as the other cases, was expressly declared by the section of the Revised Statutes which applies the uniform limitation to the landlord where the occupancy of the tenant continues after the expiration of the tenancy.

Ought or can these Statutes, after they have been applied prospectively, the time of limitation fixed has expired, and the titles, even if originally bad, become perfect and absolute, be repealed so as to act retrospectively and to divest such titles?

Of the justice and wisdom of the Statutes for quieting the titles to real estate there can be no question. They had their foundation, not like some of the other statutes of limitation, in public policy merely, but in natural justice. It is not just that a man should be compelled to prove his title with legal strictness after the lapse of many years, in which, while his rights were not questioned, the evidence of them has passed forever from his control. Oral testimony becomes impossible when the transaction is half as remote as the origin of most of our land titles; and written testimony before our recent Recording Acts was often lost, and is still exposed to many casualties. Descents are frequently so obscured by time that many an individual cannot establish his inheritance from his great-grandfather. Instruments of conveyance are often defective to execute the intention of the parties, especially after the facts which would explain them can no longer be known. If these "statutes of repose," as they have been aptly termed, were abrogated, and all titles in a country where exchanges of land are so frequent were subjected to the consequences of every flaw which interested ingenuity could discover in any link of the chain, it may well be doubted whether many, except those derived directly from the State, could be sustained. Practically, these statutes are all which men usually rely upon for the original of their titles, and application of them is a main subject of investigation when titles are passed or controverted.

A principle on which so much of the real property of the people rests should be legislated upon with great caution. Can legislation upon it in a particular class of cases and retrospectively, if it operate to annul established titles, be vindicated as right or safe or consistent with the Constitution of the State or the United States?

All our titles to lands are held under some law: is not a title which has become perfect and absolute under this law as valid and as much to be protected as a title under any other law? The Constitution of this State declares that "private property shall not be taken for public use without just compensation." It has been much debated whether the word "use" may be construed to mean "policy, benefit, or utility;" and whether, on compensation to the owners, lands which are held by a tenure deemed to be contrary to the public interest might not be taken under the sovereign right of eminent domain and afterward sold to the occupants. If this power has, even by those who advocated its existence in such a case been considered too "doubtful and dangerous" to be exercised, how can the power be assumed directly to transfer from one set of persons to another these same lands without the intervention of the sovereignty of the State, or the necessity of "public use," or the "just compensation" which are the conditions on which alone the power of eminent domain can be constitutionally exercised? Such would be the nature of a law which, although it might profess but to vary a rule of evidence, should operate retrospectively to divest a possession which had ripened into an absolute title; and such would be its effect unless the lands, notwithstanding the divestment of one title, were still held by a different possessory or other title.

The Constitution of the United States says that "no State shall pass any law impairing the obligations of contracts." The Supreme Court has uniformly held that this prohibition applies not merely to executory contracts, but to conveyances of real estate between individuals and between a State and individuals; and that the law of a State which is in the nature

of a grant or confirmation of title cannot be constitutionally repealed. Would not that Court regard a law defining in advance the nature of a possessory title, and confirming it to those who should acquire it forever against the State and against individuals, as falling within the same principle, — so far, at least, that an absolute title which had grown up under its provisions could not by its repeal be divested? And if it did not so regard such a law in all cases, would it not where the lands confirmed to the persons holding the title to which the law applied had previously escheated to the State, and the law is not only in the nature of a grant, but, departing from the usual words and form of an act, employs the technical expressions of a conveyance?

Passing these questions with a mere suggestion of the difficulties which they present, a still graver and more important one arises.

The covenants in the leases are executory contracts, and beyond all doubt within the protection of the clause referred to of the Constitution of the United States.

The Bill under consideration declares that "in any action brought to recover the possession of land for the non-performance of any condition contained in the grant or lease . . . the plaintiff shall be required, before he shall be entitled to recover in such action, to establish the validity of the title" under which he claims to hold "at the time of the execution of the grant or lease." It is understood that the power to impose this condition is claimed under the control which the Legislature is supposed to have over the remedies and evidence applying to contracts.

That the Legislature may constitutionally modify the forms of the remedies by which contracts are enforced, and the rules of evidence by which they are supported, is conceded. The precise extent to which it may go is not easily to be defined by a general rule, and has been a frequent subject of discussion, and in particular cases of difference of opinion, in the Supreme Court of the United States. But it has been settled, and is

uniformly declared in that high tribunal that the modification of the remedy and the evidence of a contract which is within the constitutional power of a legislature must not be inconsistent with the nature or express agreements of that contract, or have the effect to defeat the contract. The legislature can no more withdraw all remedy to enforce, or evidence to support, a contract, or, under pretence of modifying the remedy or evidence, do this in substance and effect, than it can in direct terms annul the contract.

In the case of Green *vs.* Biddle (8 Wheat.), Justice Story, in delivering the unanimous opinion of the Court, said: "It is no answer that the Acts of Kentucky, now in question, are regulations of the remedy and not of the right in the lands. If these Acts so changed the nature or extent of existing remedies as materially to impair the rights or interests of the owner, they are just as much a violation of the compact as if they directly overturned his rights and interests."

And on the re-argument of the same case Justice Washington said: "If there be no remedy to recover the possession, the law necessarily presumes a want of right to it. If the remedy afforded be qualified and restrained by conditions of any kind, the right of the owner may indeed subsist, but it is impaired and rendered insecure according to the nature and extent of such restrictions."

In the recent case of Bronson *vs.* Kinzie et al. (17 Pet. 28), the question was as to the validity of a law of the State of Illinois which provided that on a sale of lands under a mortgage they should not be struck off unless to a bid of two thirds of their value, as ascertained by an appraisement.

Chief Justice Taney, in delivering the judgment of the Court that the law was unconstitutional and void, as impairing the obligation of the contract, said: —

"Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy,

or directly on the contract itself. In either case it is prohibited by the Constitution. It is difficult, perhaps, to draw a line that would be applicable in all cases between legitimate alterations of the remedy and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract and the rights of a party under it may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law, declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or encumbered it with conditions that rendered it useless or impracticable to pursue it."

The legislation proposed in the Bill before us is analogous to the law of Illinois, except that it is more extreme and less defensible. It does not seem, in a just sense, to pertain either to the remedy or the evidence, but to act directly upon the contract, to alter its terms by imposing a new condition to the covenants of one of the parties. The contracts are similar, — in the Illinois case to pay interest and principal of the purchase money, and in the present case to pay rent for the purchase money; and in both cases a right of re-entry is given as security.

In the Illinois case the law was intended to make the remedy less severe by providing that the lands should be sold only at two thirds their valuation; but as it had, or might have, the effect of defeating the remedy altogether, it was declared void.

In the case before us the law is intended to reach a question as to the supposed original equities between the parties at the formation of the contract. It denies the remedy altogether, except on a condition which has no relation to the nature or operation of the remedy or the validity of the contract, or even, necessarily, to the equities then or now existing between the parties.

It says that if the party entitled, by the express words of the contract, to the remedy cannot now establish affirmatively his title at the time the grant was executed, he shall not have

the remedy. If he had a good title then, but in the lapse of thirty or sixty years has lost the evidence of it, — if, as is frequently done, he conveyed a doubtful or defective title with a warranty, and that title has since become absolute, either by the statute of limitations or by his purchase of hostile claims, which by operation of law inure to the benefit of his grantee, — he shall not have the remedy. Even if no injury or injustice has been done to the other party, if he has been protected from risk by an effectual warranty, if there was no fraud originally, and now by the effect of our quieting statutes no question can arise as to the rights conveyed, still the arbitrary and inflexible condition is interposed to withdraw the remedy, and, in effect, abrogate the contract.

This discussion of the Bill proposed has been deemed necessary because its real character and effect seem to be so little understood. It applies not only to the estates in regard to which the difficulties exist and those of similar character, but to leases and grants for any terms exceeding ten years, including a vast amount of property in our cities, and is offered as a measure of general legislation.

Your Committee have no reason to think that if it were passed and were valid, and should go into effect, it would afford any relief to the petitioners, or in any measure accomplish the important object of public policy in extinguishing the leasehold tenures. Nor do they entertain the slightest doubt that, if it were enacted, it would be held by the Supreme Court of the United States to be unconstitutional and void, would create expensive litigation, which, even if it could be successful, would not be likely to effect any good for the tenants or the public, but which could not be successful, would divert attention from other and more practical remedies and from all effectual measures, by legislation or by compromise, of terminating a relation which has been so fruitful of mischief.

The question presented by some of the tenants is a very different one from that involved in the Bill before us. That they should have, in a general and popular sense, the right to try

the titles of the landlords in the courts, seems to them but equitable. The exact sense attached to this current phrase it is not easy to ascertain, and probably it is very different with different individuals. As far as the Committee could learn, they do not contemplate anything further than a removal of the estoppel, which, under existing rules of evidence, is the legal effect of the lease, restraining the tenant, in any action between him and the landlord, from raising the question of the validity of the landlord's title. A Bill, in conformity with this idea, has been introduced into the Senate, which allows the tenant, in such case, to set up a different title against the landlord. This is understood to impose the burden of proof on the tenant; but whether it does so, or requires the landlord to show his title in the first instance, your Committee do not see that the measure could, in any respect, practically benefit the tenant. In the latter case even, the landlord would merely have to prove his claim of title, which he could do by the lease, and then prove an occupancy under that claim, either by himself or through some other person shown to have held under that claim, for twenty-five years, and his title would be established against the world. This, it seems to be conceded, could uniformly be done in the cases to which the act would apply.

The covenant of the tenant to pay rent, where he remained in undisturbed possession, and the warranty of that possession was not violated, could not be defeated.

If it be true that in any case the title of the landlord is not good, the real title, in the absence of any private claimant, is in the State; and the State is not only the rightful owner, but is in a much more advantageous situation to enforce its right to the possession than a private claimant can be.

It is an error to suppose that the tenants can have acquired a title by adverse possession. The very idea of an adverse possession is of a possession claimed to be in the occupant's own right, and adverse to every other right. That claim must be evidenced by words or acts; it must be continuous during the whole period of possession required. A submission to

another title destroys its character and effect. These tenants, it is conceded, have never been in possession except under an admission, verbal or written, that the possession was not in their own right as proprietors, but as tenants in the right of others.

Nor is there any foundation for the idea that the State is bound by the Statute of Limitations against itself, but not by the effect of that statute as between individuals. It can no more destroy rights that have under that law vested against private parties, than rights which have vested against itself. If it has lost lands which had escheated to it by the operation of its own declaration that, after a certain defined period and a certain defined possession, it would not assert its right to these lands, the party entitled to them under that law holds them as if by a formal grant. The State can no more change the effect of the law so as to transfer the lands to another person than it can change that effect so as to recover the lands to itself. The principle is well settled that the State has not the constitutional power to resume a grant of lands which it has made. Who ever dreamed that it could transfer the lands to a different person from him to whom they were originally granted?

Standing as the State does on the same ground as an individual in respect to the binding validity of these statutes, it has in another respect a manifest and great advantage over individuals. The limitation applying to it is forty years, instead of twenty or twenty-five years, as between individuals. In any action between the tenant and the landlord, the question will be confined by the operation of laws which cannot be constitutionally repealed, in their retrospective effects, to the present title; while in an action between the State and the landlord, the question may go back to any time within forty years; and if the first lease has been in existence less than that period, may reach, as the Bill "concerning tenures" ineffectually proposes to do, the original title, although the decision could not affect cases where the lease had been of longer duration.

It is made, by the Revised Statutes, the duty of the Attorney-

General, whenever he shall be informed, or have reason to suspect, that the State has a title to any land, by escheat, to institute proceedings for their recovery; and it is perfectly competent for the Legislature, by resolution, to instruct that officer to bring an action in any case which may in its judgment warrant such a course, and to allow persons having any equitable interests in the lands to associate with him their own counsel, or to provide by general law for any class of cases which may require such legislative interposition.

Your Committee have felt that it was due to the importance of this question, as well as to the number and character of the petitioners, candidly to consider all the aspects in which it has been presented. The discussion may not, however, be strictly applicable to the point actually involved. Your Committee have already adverted to the misapprehension which exists as to the real nature of most of the instruments under which the lands in question are held. It is well settled, in legal classification, that an instrument which conveys the whole quantity of the grantor's estate is not properly a lease. That estate in these cases is a fee; and of the instruments examined by your Committee, or ascertained to exist, five sixths are grants in perpetuity, — conveyances of the fee. Of most of those, the Van Rensselaer lease is a specimen. Its operative words are not those usual or appropriate to a lease, — "lease, demise, and to farm let;" but those of several different forms of conveyance, — "grant," "bargain and sell," "remise and release," and "confirm;" "to have and to hold" the farm, "to the only proper use of the said party of the second part, his heirs and assigns, forever." It contains also, on the part of the grantor, the usual covenants of quiet enjoyment and warrantee. It is, in a word, a warrantee deed. The fee of the land is conveyed to the person who is called the tenant, but who in truth is the owner. The reservations, conditions, and covenants are in the nature of a grant by the buyer to the seller of an annuity secured on the land, or mortgage for the purchase money. The relations of the parties are the same as in such a case, except that the

remedies for violation of the covenants have some not very important peculiarities. The title is in the person called the tenant, who is the owner of the land, in contemplation of law, and in fact, just as much as any man is of his farm who owes a mortgage or judgment. Mr. Van Rensselaer has no title; he has conveyed it to the tenant; nobody but the tenant has any title. It was originally warranted to him by the person from whom he received it, and it is now good against the world. There is, it is true, an incumbrance upon his farm, and in a very objectionable form, because it is perpetual; and he has made some stipulations, called reservations, which are not convenient to him, or consonant with the public interest. The Legislature has no power instantly to annul or change the contract. If it should attempt to do so it would itself be overruled, and would but delude and betray the unfortunate man who trusted to it, — overwhelm him with expensive litigation and certain defeat. But it should adopt any measures within its constitutional power to remove discriminations against him, as compared with other debtors, and it should, from considerations of public policy and public duty, prohibit these peculiar relations, which have proved so undesirable, for the future, and do what it can, rightfully and justly, to terminate those which now exist.

Your Committee have examined the subject with a sincere and anxious desire for the accomplishment of this object. They have matured a Bill for your consideration. It prohibits for the future leases of agricultural lands for a period exceeding ten years, and proposes, by the exercise of the unquestionable power of the Legislature over the statutes of devises and descents, to provide, at a future and not very distant period, for the commutation on equitable principles, in chancery, of the rights and interests of the landlords and the conversion of them into mortgages, payable at once or in reasonable instalments.

The Bill, it is believed, is free from constitutional objections. It acts prospectively, and disturbs no rights which have vested.

It merely attaches a condition to the future devise and descent of a certain species of property, and acts upon them far less than our previous legislation has frequently done. By the diminution of the control over property after death, from a period equal to any number of lives in being and twenty-one years, to a period equal to two lives in being and twenty-one years, and by the abolition of passive trusts, the Revised Statutes made more violent changes in the previous laws of devise, and unsettled the disposition of a vastly larger amount of property, than the present Bill proposes to affect in a much less degree. They also altered the course of descents wherever it seemed expedient, in some instances taking away, and in others conferring the descent; although comprehensive changes were not required after the statute of 1786 abolishing entails and primogeniture, and establishing our present rules of succession. An excessive suspension of the power to alienate lands, which restrained any one man from having their complete control, and prevented the full development of their resources, was the principal evil designed to be remedied by these great changes. It exists practically, though not theoretically, in the present case, accompanied by peculiar and greater social evils; it suggests the nature of the remedy, and justifies the application of it which is proposed, and which is much less extensive than on those former occasions. The constitutional power of the Legislature over these statutes, which has been thus exercised, is not limited by the narrow boundaries which confine it in acting upon statutes prescribing the remedies and evidence applicable to existing contracts.

The provisions of the Bill have been framed to operate without harshness on private interests, and to make the proceeding so cheap as to be at the command of any man who may desire o avail himself of its benefits. For the ascertainment of the alue of the interests and rights of the landlords, rules are escribed which seem to be just and equitable. The present lue of the reservations is to be a principal sum, which at the al rate shall produce an interest equal to the annual rent.

The idea has been entertained that, inasmuch as large sums of money cannot be safely and conveniently invested to produce the legal rate of interest, a less rate should be assumed by which to calculate the value of the reservations; but if allowance be made for the expenses of collections, agencies, and other incidents of these investments, their income would not exceed, if it would equal, the income of an investment of the amount at which they will be estimated in securities, which would on the whole be generally preferred.

The legal validity of any reservation may be questioned and determined, and none which is not valid is to be estimated. The reservations of quarter and other proportional sales and charges upon alienation are not believed to be valid by the existing laws of this State. Under the feudal system the tenant in fee-simple could not alien his lands without a license from the lord, and if he did so, the lands were forfeited. A custom arose of commuting this forfeiture, or giving the license on payment of a fixed sum, the acceptance of which at length became obligatory upon the lord, and which was called a fine on alienation. The growing disposition of the tenants to possess the right to alien, and the inconvenience to the lords from their right to establish sub-tenancies, concurred to produce the statute *quia emptores*;[1] which declared that thereafter it should be lawful for every freeman owning a fee to alien it at his pleasure, but provided that the assignee should hold, not of him, but directly of the superior lord.

The construction of this statute adopted by the common-law authorities[2] was that it took away in all the cases to which it applied, not only the right to restrain alienation without consent, but also the right to establish a fine for consent; and it was held that a condition for either purpose in a grant in fee is void from repugnancy to the nature of the estate conveyed as defined in this statute. But the Act did not apply to the

[1] 18 Edw. I., chap. 1.

[2] Co. Lit. sec. 360, note to 223 a and to 43 a and b; Sullivan, 12 Lec. p. 118 Gilb. Ten. 135; Wright, Ten. 153.

king, and it was questioned whether the tenants who held directly from him were not still liable to the forfeiture; until at length a statute was passed that he should not exact that penalty, but should accept a reasonable fine, to be ascertained in chancery; which was there fixed at one third of the yearly value of the lands if consent was previously obtained, but if not, at once their yearly value. That fines on alienations were principally known in English law, and their existence as between the lords and their tenants before the statute *quia emptores*, does not seem to be recognized by Blackstone, and appears to be rather a matter of antiquarian research. The statute of 12 Charles II. abolished the feudal system and its incidents, among which were expressly enumerated fines on alienation.

Our statute of 1787, "concerning tenures," substantially re-enacted the statutes *quia emptores* and of 12 Charles II., and expressly the parts of them which affect this question, and which had received this settled construction through a long period in England. Aside from the objection of repugnancy, if a condition in a grant in fee, imposing a charge or fine on each alienation, can, in this state of the law, be sustained, it is difficult to imagine how any condition could be held void as contrary to public policy. The words, the occasion, and the history of the Act of 1787 show that its design was to prevent the existence in this State of the tenures and incidents which the Acts it copied had abolished in England. It was enacted, as the revisers of 1830 suggest, not because it was necessary, but for "abundant caution;" and even if it does not operate as an express prohibition, it would seem from its nature and object to constitute, if any statute ever did, an authoritative declaration of public policy, the principles of which no private contract could be allowed to contravene. A general condition in a conveyance in fee not to alien is settled in this State to be void, as contrary to public policy.[2] The rule by which it is so held was first established in England by the statutes

[1] Co. Inst. 67; 2 Bl. Com. 72. [2] 4 Kent, 131.

which have been thus re-enacted in this State. The reason of those statutes, and their uniform construction in that country, are no less inconsistent with a charge in the nature of a fine on alienation than with a positive restraint on alienation. Nor has any exception been established, there or here, in favor of such conditions in grants, reserving rents or services, with a possibility of reverter. On the contrary, it was to exactly such cases that the statutes originally applied; nor is the evil or inconsistency with public policy any less in those cases. It should be observed, too, that the relation between the lord and the tenant was created by contract, express or implied; and the consent of the tenant to the condition in the grant was as much given as it can be now by the stipulation of such a condition in a grant.

It seems to be supposed that the courts of this State have held such conditions to be valid; but an examination of the cases shows that they have not gone farther than to determine, in two instances, that a condition in a lease in fee to give a pre-emption to the lessor on any subsequent alienation is legal; while the analogies of all similar questions are against the validity of conditions for proportional sales. In Jackson etc. *vs.* Silvernail [1] one of the questions was whether, in a lease for two lives, a sub-letting of part of the farm, and a sale of it all under execution, were violations of a condition not to alien without written permission; and without discussing the validity of the condition itself, which is conceded, by the same judge in the next case, to be void, the Court held that it had not been violated. Jackson etc. *vs.* Shultz [2] was the case of an instrument, with the operative words of a lease in fee, with conditions not to sell without written permission, for a pre-emption, and for the payment of a tenth of the proceeds of the sale; all of which were violated. Justice Platt delivered the judgment; and in his opinion held that the two conditions for pre-emption and tenth sale were valid. He construed the statute of 1787 as merely reversing the feudal rule establishing

[1] 15 John. 277. [2] 18 John. 174.

forfeitures and fines, and making the right of alienation incident to a grant in fee, unless that right was qualified by express stipulation, which he said the parties might lawfully do; but he made no distinction between leases in fee and other grants in fee, and applied his construction to both equally,—which in the latter case is inconsistent with all the other authorities. If his dictum, that the consent of the grantee can make such a condition valid, is right in its application to all grants in fee, then the whole current of English and American adjudications on the point for five centuries is wrong; and not only in regard to this condition, but all similar ones in conveyances and devises, which have, upon the same grounds, been uniformly decided to be void. Chief Justice Spencer "concurred in the result of the opinion" that the plaintiff was entitled to judgment, on the ground that the condition for the pre-emption was lawful; but "on the other parts of the case it was not necessary, nor did he mean to express any opinion." In Jackson etc. *vs.* Groat[1] the question was whether the conditions extended to a second transfer. The Court decided that they did; and incidentally referred to the two former cases as establishing the validity of the conditions for pre-emption and for a tenth sale. This was a case of a lease for two lives; it did not necessarily involve the validity of the tenth sale, which had not been settled, even in a lease for lives, by the two cases on which it proceeded, and it cannot be regarded as a decision on that question, or as extending in that respect the authority of the case of Jackson *vs.* Shultz. Livingston *vs.* Stickels[2] was a case of a lease for two lives, with a condition for a tenth sale on each alienation, and on an appeal from a decree of a vice-chancellor enforcing the payment of the tenth sale. Chancellor Walworth, although assuming that such a condition in restraint of the alienation of leasehold property might be sustained at law, reversed the decree. "I prefer," said he, "to put my decision in this case on the express ground that these agreements, in the nature of fines upon

[1] Cow. 285. [2] 8 Paige, 398.

alienations, are inconsistent with the spirit of our free institutions, and injurious to the community. And although this Court has no right to interfere with such contracts, so far as the laws of the State sanction their validity, it ought not to interpose its extraordinary jurisdiction to enforce the rights of the landlord in cases where he has not by his contract secured to himself a legal right, as contradistinguished from an equitable claim to enforce a hard bargain, for which the law gives him no right of action."

It seems to your Committee that if, as they think, the Bill proposed is within the constitutional power of the Legislature, there is no more objection to its principle than there would be to the enactment of the present law of partition, if it did not now exist, as applicable to future heirs and devisees. The provisions of the Bill, while they must be adapted to the peculiarities of the case, are intended to be equitable between the parties, and should at all events be made so; but there seems to be no reason why the relation between these parties — which differs essentially from that of the parties to an ordinary contract, and is more analogous to a case of joint interests in lands — should not be dissolved on equitable terms and by the courts; while there are strong considerations of public interest and public policy which require that if it can, it should be done.

The adoption of the measures recommended by your Committee will, it is believed, produce a gradual and rapid extinction of the leasehold tenures, without injustice to any person, perhaps within a period not much longer than the convenience of the parties might dictate, and will, at all events, accomplish the important object of public policy in the extinction of these relations in their most objectionable feature, which is that they are perpetual.

SAMUEL J. TILDEN.	CLARK S. GRINNELL.
BISHOP PERKINS.	BENJAMIN BAILY.
A. G. CHATFIELD.	REUBEN LEWIS.[1]

[1] For the documents accompanying this Report, see Assembly Doc. 150, dated March 28, 1846.

XIII.

WHILE a member of the Legislature of 1845, Mr. Tilden was elected from New York city to the Convention which was to meet in the summer of 1846 to revise the Constitution of the State. As a member of that body his attention was specially directed to the reorganization of the Judiciary, to the administration of our canal system, and to questions of banking and finance.

On the 28th of September, 1846, the following provision, which had been reported by Churchill C. Cambreleng, the chairman of the Committee on the Currency and Banking, was adopted as a section of the Constitution by a vote of 51 ayes to 27 nays: —

"SECTION 5. — The Legislature shall limit the aggregate amount of bank-notes to be issued by all the banks and joint-stock associations in this State now existing, or which may be hereafter established."

The next morning Mr. Tilden moved to reconsider that vote, and the motion, after a vehement debate, was carried. This provision was a favorite idea of Mr. Cambreleng, who during the debate menaced Mr. Tilden with the indignation of his constituents. When the question on the adoption of the section was taken, it was lost by a vote of 44 ayes to 58 nays, and the section was rejected.

CURRENCY AND BANKING.

SPEECH AGAINST IMPOSING CONSTITUTIONAL LIMITS UPON THE ISSUE OF BANK-NOTES.

MR. PRESIDENT, — I very much regret to differ, even on an unimportant question, from my friend from Suffolk. In the great contests of 1834 and 1837 in regard to the currency, — if I may use an expression which implies so much of equality between so humble an individual as myself and my distinguished friend, — I stood shoulder to shoulder with that gentleman. At a period even earlier, and on mature reflection, I adopted the great principle of free trade as applied to the business of banking, which was so ably and successfully vindicated by Leggett in the memorable controversies that followed its first practical assertion by a small number of persons in the city of New York, at that time derided as visionaries and disorganizers. I maintained the doctrine during those contests in resolutions and other forms adopted and approved by the Democracy of that city; I stand by it now. I always supposed that it was held by my friend from Suffolk, and was surprised to learn since he came here that the fact was in some respects different.

When, Mr. President, will men learn to trust more to the laws of trade, and less to the artificial "regulations" of government; more to the wise arrangements of Providence, and less to their own cunning devices? If the Government had confined itself to its appropriate duty of furnishing a standard of value, recognizing nothing as money but the constitutional

currency of gold and silver, — if it had abstained from interfering with the circulating credits which exist only by the voluntary consent of individuals, and from giving them its sanction under the pretence of regulating, and thus creating an unnatural confidence in them, — we should have had the best currency enjoyed by any nation. The smaller channels of circulation would have been, to a much greater degree, filled with coin, and the paper which existed, deriving no credit from the Government sanction, and furnished under an active competition as to its quality and the guaranties for its redemption, would have been of the soundest character. But, unfortunately, our Government has claimed as a prerogative of sovereignty, not merely to fix the standard of value, not merely to supply the legal currency, but also to furnish the common form of circulating credit, which is sustained by the voluntary consent of individuals. It has then farmed out this prerogative of sovereignty to trading corporations, organized for the private gain of stockholders, and made what it claimed a right to interfere with only as a proper function of government, a mere incident of trade. It has then prescribed certain general regulations which it has assumed to be the great secret of safe and successful banking, but which have not the slightest tendency to prevent the worst evils really experienced, and has exempted a system, thus subjected to all the dangerous impulses of private business, from the laws of trade, by which alone those impulses could be restrained. It would not be difficult to show that nearly all the mischiefs of banking proceed from such unwise legislation. If the occasion allowed, I should hope to exhibit and prove, by admitted facts, the modes in which legislation suspends or obstructs the natural laws which would regulate banking; that its artificial restrictions have been wholly inoperative as to the most essential points; and that all the practical regulations which the business has had, is from the laws of trade thus suspended or obstructed. But, limited to so brief a period for discussion, I can but glance at a few of the most obvious views of the subject. The first great error to which

I shall refer is in withdrawing to a very large extent from banking the influence of a principle which alone does or can restrain the excesses of any business, — I mean the responsibility for its hazards of those who are to receive its profits. We not only gave to the banking corporations for a long time an entire monopoly, but we even now continue to them an exemption from as high a degree of liability as applies to most trading corporations, and from the full degree of liability which applies to individuals engaged in business. The consequences of this privilege, this immunity over the great mass of other business, have been to invite an inordinate proportion of capital into banking, and to cause a most false and dangerous system to be organized. The moneys of widows, of children, of retired persons, and of all those who are incompetent to engage in active business; who have not the personal knowledge, or are incapable of the personal supervision, or are unwilling to incur the risks which belong to active business, have been collected together, — generally in small sums, the incomes from which would not recompense much personal attention or effort, — and intrusted to the management of persons who have no considerable interest in the institutions which they control, to directors, who are frequently borrowers, rather than lenders, and to salaried officers, — in a word, to persons on whom those motives to vigilant care and assiduous effort which are the springs of success in all business, can operate, if at all, but very slightly. Would any sane man venture such an experiment in any other business? Would it be expected to succeed in any branch of commerce or any mechanical trade ordinarily conducted by individuals? And yet we have applied this false and mischievous system to the most delicate and perilous of all kinds of business, — an irregularity in which disturbs every department of human industry. I hoped that the Convention would correct this great error, and would enforce that full personal responsibility of the stockholders in banking corporations to which I have long looked as a principal means of renovating our present vicious

system. I regret that the honorable chairman felt compelled to abandon, without taking the sense of the Convention upon the question, so important and valuable a reform.

In another respect our legislation has been no less unfortunate, — it has suspended the law of trade, by which alone fluctuations in the amount of the currency are restrained. I do not mean to discuss the general question as to the policy of the laws fixing the rate of interest; I wish merely to advert to the effect on the currency of the establishment by law of a uniform and inflexible rule of discounts for commercial paper. The rise in the price of a commodity resulting from a supply less than the demand is a beneficent arrangement of Providence by which every person is warned of the scarcity, consumption is checked, and the supply eked out to the demand. If, for instance, the price of flour were inflexibly fixed at five dollars a barrel, when there was a deficiency, instead of its use being economized by the substitution of other articles and by every ingenious expedient, we should all consume with the prodigality of abundance, until the whole supply was exhausted and absolute scarcity produced. This principle is just as true of the supply of loanable capital as of anything else. Its operation has been repeatedly shown by experience. Early in 1836 (I speak from recollection, and cannot state the exact period), some twelve months at least before the suspension of specie payments in May, 1837, money was worth in Wall Street from 1 to 2 per cent a month. If the rate of discount at the banks had been allowed to rise with the market, the price would have been somewhat less than it was in the street, but much more than the legal rate. Individuals would not have based their calculations and formed their contracts on the expectation of obtaining discounts to meet them at the legal rate, risking only, what men are not disposed to fear, the chance of not being able to get a sufficient quantity. They would not have procured means on which to do business at an interest larger than the usual rate of commercial profit; they could not have competed for loans with the speculators, who

were anticipating enormous gains; and must have reduced their business to their own capital. If at that early period — more than the length of an ordinary commercial engagement before the catastrophe — reduction had been begun, the shock would have passed the men engaged in regular business and fallen only on the wildest adventurers. It is not too much to say that, except for the legally established rate of discounts, the worst calamities of the commercial revulsion of 1837 could not have occurred. Nothing can be more obvious than that the inducement to obtain discounts is the difference between the rate of profit at which money can be employed and the rate of interest at which it can be borrowed; that in times of commercial excitement, when the rate of profit rises, if the rate of interest is artificially kept down, the demand for discounts must be greatly increased; and that the natural and effectual check on that demand is for the rate of interest to rise with the rate of profit. The Bank of England has for the last ten years regulated the amount of her discounts, not as our banks do, by arbitrary selections between the notes offered for discount, but by raising the rate of interest; and the experiment has proved entirely successful. I do not suppose it would be safe to remove the restraint on the rate of discount charged by the banks unless the greatest freedom of competition was allowed to individuals and associations; but if such freedom were allowed, I do not doubt that the general rate would be as low as now, while its fluctuations would be constantly operating to preserve the equality between the supply and demand. Other errors in our legislation, scarcely less mischievous, there have been; but I cannot now discuss them. So far as their effect has been to build up an elaborately artificial system, and to give to its issues a false credit, the evil has become so interwoven with existing institutions and modes of business, and with prevalent habits of thinking and acting, that it can be but gradually removed. But the two great errors to which I have before adverted are within the power of this Convention or of the Legislature; they could be remedied by a single act, and

I doubt not that so beneficent a reform will be ultimately accomplished.

That measure would afford a most efficient remedy, if not the only one applicable to our condition, for those fluctuations in the aggregate amount of our currency which are its greatest evil. There cannot be, I know, an indefinite expansion of a currency convertible into coin. The liability to the demand for instant redemption in specie of the paper issued, operates effectually to subject a convertible currency to the same law which governs the aggregate amount of a specie currency, and to keep it at the same average. If the currency of this country becomes excessive as compared with that of other countries, prices rise relatively to those abroad, importations are encouraged and exportations discouraged, until an adverse balance of trade is produced; foreign exchange rises, and when it passes the point at which specie can be profitably shipped, a demand for it compels the banks to contract their issues, and the currency is restored to an equilibrium. Nevertheless the vibrations of an elastic currency are sometimes considerable before the check of the exchanges operates; and in two remarkable instances in our history — in 1818 and in 1837 — the regulating action of the exchanges was suspended, by causes to which I cannot now refer, for a period; and the expansions reached nearly 50 per cent on the whole amount of the currency, and were followed by reductions to about the original quantity, which produced widespread distress and ruin. The attention of legislators and of the public does not seem to have been much drawn to this subject. While we have made careful provision lest a man should lose a one-dollar note, we have made none against a fluctuation which may change the value of his property one half, reduce a claim he may have to receive one half, or double a debt he may have to pay. My reflections were long since addressed to this evil and its remedy. From a careful examination of all our legislation, I am satisfied that it contains not one provision calculated to prevent this mischief, but that its whole tendency has been greatly

to increase it, by suspending or obstructing the laws of trade, which alone could restrain these various fluctuations. The object cannot be obtained by artificial means except by a suppression of our whole bank-note circulation, a separation of the issue of currency from the business of banking, and a supply by the Government of the necessary circulating medium; and even that would not be effectual so long as we permit other forms of circulating credits. If insuperable obstacles exist to such a measure, the only alternative presented is to restore the natural action of those checks which exist in the very nature of business, and in interfering with which we have incurred, as far as fluctuations in the currency are concerned, all the mischiefs of absolute freedom without its compensating advantages. It is utterly idle, and worse, to expect a remedy from any legislative measure such as is proposed.

This section imposes upon the Legislature the duty of fixing the aggregate circulation of all the banks in the State at a specified amount. How is such a provision to be executed? Assume the aggregate amount, and how is it to be distributed among the numerous banks? Not in the ratio of capital; for in the city banks the circulation is mainly in the form of deposits, while in the country it is almost wholly in the form of bills; and such a rule would be most unequal and mischievous. Not certainly according to the present circulation of the banks; for that would be to perpetuate by law an accident, without reference to inevitable changes in the future. Either rule would destroy all exercise of judgment in those who receive the bills, and by confining the circulation of banks with good credit, enforce the circulation of banks with bad credit. But there is a still greater difficulty. Under our general laws, a few individuals may at any time establish a bank. What is to be done in such a case? If the circulation is to be confined to the banks now existing, that would be to restore the old system of monopoly; if a change is to be made in the amount allotted to each every time a new bank may happen to be set up, the interference of Government and the disturbances of business

would be incessant and intolerable. Can it be doubted that, under such a system, struggles between the different banks would arise at every session of the Legislature, and also endless conflicts of local interests?

Nor is the proper amount of the aggregate circulation so easily to be fixed. Who can say at any moment what it ought to be? If fixed too high, it would be merely a delusion and a snare. If too low, it would cause the influx of the paper of other States which is less safe than our own; for even if it be practicable to prevent such an influx, no provision for that purpose is proposed. The attempt to fix the amount from time to time would generate incessant controversies utterly destructive of the stability of business. Who does not know that whenever a pressure in the money market should occur there would be a clamor for relief by enlarging the issues? And this even if they were already too large, and were not restrained in practice by the limitation, from the mere fact that Government professed to regulate the matter? Men would be taught to look, not to themselves, but to the Government, for remedy; endless controversies would arise, and perhaps even parties be arrayed on such questions. All the interests of business would be drawn into the vortex of politics, and a state of wretched insecurity and instability produced. What regulations can be established by general and permanent law, Government might make, wisely or unwisely; but if the Legislature be converted into an administrative board to manage in detail the currency of the State, fixing from time to time its aggregate amount, and allotting that amount among some hundreds of different banks according to its varying discretion, I hazard nothing in saying it would do intolerable mischief, as well as violate all sound principles.

The idea of this provision is adopted, I suppose, from the discussions on the currency which have taken place in England. It had its origin with Mr. Ricardo, who devised a plan for uniting in a currency the uniformity and stability of specie with the convenience and economy of paper, and some of the

prominent parts of whose plan have been recently attempted to be put in practice. The Bank of England has a monopoly of the circulation for sixty-five miles around London; its notes are made legal tender except by itself, and are the medium in which the country banks redeem their bills; and the issue of notes is separated from the business of making discounts, and put in charge of a distinct board of administration, who attempt to regulate the amount of the circulation, not according to the demand for discounts, but according to the principles which govern the fluctuations of a specie currency. This system is obviously inapplicable to our condition. Instead of having one central institution, which issues most of the currency and practically governs the whole, we have hundreds of independent establishments, scattered over the whole State. We have no power to make the notes of any a legal tender, which is an indispensable part of the scheme. And instead of a board of competent officers to administer the circulation of a single institution, the proposition is that we leave the Legislature to administer, without any rules prescribed to them or mode established, the circulation of several hundreds of independent institutions.

I have long been of opinion that Government should either separate the function of issuing currency from the other business of banking, and assume to itself that office, or should allow it to be a mere incident of trade, to be governed by the laws of trade. If the present proposition were that the Government should do the former; if it were a complete and effectual plan; if indeed it would accomplish anything of value toward the object, — it would be worthy of great consideration. But I see in it no approximation to such a result, or any beneficial result, but merely an officious intermeddling of Government with what it after all leaves to the practical regulation of trade, — an intermeddling which is wrong, because it concedes the principle that the office which it assumes is a mere matter of business; an intermeddling which does not go far enough to attain any possible good, and is sure to produce

great mischief. The question whether the Government should assume the function of issuing circulating credits, or should leave it to be an incident of trade, I will not now discuss; but I will remark that it seems to be impracticable to adopt in this country a system so artificial as that of England. The distribution of powers between the National and State Governments would prevent either from doing what would be indispensable to the execution of such a scheme; and in other respects the system is not adapted to our institutions or condition.

XIV.

THE Democratic National Convention, which was called to nominate a candidate for the support of the party at the Presidential election of 1848, met at Baltimore in the month of May of that year. The regularly chosen delegates from the State of New York were practically excluded from the Convention because the State Convention which nominated them had declared against the extension of slavery into the free Territories of the Northwest. In the following June a State Convention was held at Utica "for the nomination of a President and a Vice-President of the United States," that the people might determine whether they would support the candidates in whose selection they had not been permitted to participate upon what they regarded as honorable terms, or whether they would nominate other candidates. The Honorable Samuel Young, a venerable and venerated citizen of Saratoga, presided at this Convention. Upon taking the chair Mr. Young made a statement which, at the time, might have passed for a bit of somewhat turgid rhetoric, but when read by the light of subsequent history, rises to the dignity of prophecy. "I am proud," he said, "to be associated with men who, by Southern Abolitionists, are denominated 'Barnburners.' Thunder and lightning are in the natural world sometimes barnburners; and if this Convention do its duty, and carry out the ideas which are in the hearts of the people, a clap of political thunder will be heard in this country next November that will make the propagandists of slavery shake like Belshazzar!"

The Report of the delegates to the Baltimore Convention, which was then submitted, was written by Mr. Tilden. It presents in a compact form the reasons which actuated the leading Democrats of New York in refusing to support the nominee of

the Baltimore Convention at the election of 1848. The Convention to which this Report was addressed crowned its deliberations by the nomination of Martin Van Buren, of New York, for President, and Charles Francis Adams, of Massachusetts, for Vice-President.[1]

[1] As an important chapter in the history of Mr. Tilden's connection with the Free-Soil revolt of 1848, the reader's attention is invited to the Supplement, vol. ii. p. 535

FREE SOIL REVOLT IN NEW YORK.

REPORT OF THE NEW YORK DELEGATES TO THE NATIONAL DEMOCRATIC CONVENTION OF 1848 MADE TO A DEMOCRATIC STATE CONVENTION HELD AT UTICA, JUNE 22, 1848.

To the Democratic Republican Electors of the State of New York.

FELLOW CITIZENS, — Delegated by you, in conformity to the usages which you deliberately established and have invariably adhered to, for the purpose of conferring with the representatives of the Democracy of your sister States in regard to the nomination of candidates for President and Vice-President, we repaired to Baltimore to execute the trust with which we had been clothed. It was known to you that a systematic effort was making to get up a spurious delegation from this State; that a combination of the friends of the aspirant for whose benefit it was designed was relied on to secure its sole or joint admission, and thus either to misrepresent your will or to neutralize your voice in the selection of candidates, and by the agency of men within the State, false alike to its honor and their duty, to surrender its political action to men without, who had been hostile to its convictions and the cherished representatives of those convictions, and with whom they had, for similar purposes, plotted and accomplished the disastrous overthrow of the Democracy of this State in 1846.

Of the manner in which that delegation was got up; the pretended passage of a resolution recommending a change of the established usage of the party by the Syracuse Convention, fraudulently constituted, and after a majority had ceased to participate in its proceedings; the total want of authority of

that body to act upon the subject, which was not within its delegated powers as defined in the call under which it assembled; the almost unanimous refusal of the people, through their undisputed local organizations, to adopt what was at most only claimed to be a mere recommendation; the repudiation of it by the caucuses of the Democratic members of the Legislature for 1847 and 1848, in some of which the conservatives participated, and which for twenty-five years have exercised exclusive authority in calling State conventions; the subsequent assembling of the Albany Convention under a call, emanating from a pretended State committee which never had a valid appointment or could have been vested with such power consistently with the well-known practice of the party, and dispensing with the action of all the local committees of the State in convoking the primary meetings to appoint delegates; the constitution of that body by volunteers from less than three quarters of the districts, sent in many instances without meetings being held at all, in others from meetings attended by less than a half dozen persons in districts where the Democratic electors are counted by thousands, and in almost every case from meetings held without the authority of the local committees, or any regular call; the superseding by a Convention thus formed of the functions of the local committees in 34 Congressional Districts, 59 counties, 128 Assembly Districts, and 700 towns and wards, appointed, as of right they could only be, by the people of these localities, and the vesting of their functions in 34 committees appointed by this voluntary and irregular Convention; the formation in this manner of a new and complete organization within the bosom of the Democratic party, without authority, and in derogation of its settled usages and of the rights of the people to choose their own local committees; the call by the new local committees appointed by this irregular and volunteer Convention of the Congressional District Conventions, at which the spurious delegates were chosen, — of these things it is not necessary for us to speak to you. You

are better informed of them than anybody else can be, and have already made known your unalterable determination to resist a usurpation so fraudulent and so stupendous, — a usurpation which has had no parallel, except in a similar attempt in 1844, at the instigation of the Tyler Administration, which its authors had not the audacity to carry out, and which found its disgraceful termination in the separate National Convention held at the same time and place with that it was originally intended to disorganize.

Instructed by you not to submit to or compromise with such an outrage upon your rights and honor as the admission of a delegation thus originating would be, and desiring to enter upon a conference with the delegates of our sister States, in which we might hope to secure the nomination of candidates from whom you might expect an amnesty from such hostile intrigues, a faithful representation of the recognized principles of the Democratic party, and an exemption from the application to you of tests on questions forming no part of its recognized creed, and in respect to which its members hopelessly differ, we proceeded to the duty assigned to us.

Before the Convention assembled it was freely avowed in conversation by influential members that the question of our admission would be decided by considerations wholly irrespective of our title to seats. It was declared that, delegated as we were by a Convention which, while it imposed no test on others, declared its opinion against the extension of slavery by the Federal Government over Territories now free, no Southern man could venture to vote for our admission, however conclusively we might show the validity of our title. And it was understood that the mode by which our exclusion would be first attempted would be by imposing on us, as a condition to our admission, a test which would operate upon us peculiarly, and which would bind us — whether admitted or rejected, whether having any voice in the nomination or not — to support candidates pledged against the opinions solemnly, repeatedly, and with unexampled unanimity declared by the

people of this State on the question of free soil for free labor in the newly acquired Territories; while the members who imposed this test on us would take their chance of securing a nomination favorable to their opinions, and if they failed would themselves be bound to support the nominees of different opinions, or even those who had made no expression. Nevertheless, we felt it to be our duty to apply for admission, and to use all honorable means to avert the disastrous consequence which would inevitably result from our exclusion on grounds and in a mode so unjust and so insulting to the Democracy of this State.

Soon after the temporary organization of the Convention, a resolution was offered by Senator Hannegan, exacting a pledge to support the nominees, not only from all the members who were admitted, but from all persons claiming seats; but on the motion of Mr. Yancey, of Alabama, who in common with delegations from other States was instructed not to support, if nominated, any candidate who did not expressly disavow the opinions declared by a vast majority of the Democracy of New York, and even those opinions on which the spurious delegates attempt to show that legislation in favor of free territory is unnecessary, the Convention rejected the resolution.

A committee was then appointed "to examine credentials, and report the number of Delegates to which each State is entitled, and the names of the Delegates."

The committee, having organized and reported on the credentials of the delegates from the other States, appointed eight o'clock P.M. for the New York case. Your delegates attended at that time, prepared to show their right to represent you in the Convention. A resolution was adopted allowing three hours for the discussion before the committee, and a second resolution was proposed refusing to open the discussion to the contesting delegates until they should first pledge themselves to abide the decision, — the premeditated wrong of which had already become so probable, — and, whether admitted or rejected, to support the nominations of the Convention. On this latter

resolution a discussion ensued which consumed the whole period allotted to the examination of our case. The resolution was opposed with great ability by members of the committee. It was urged that the committee had no power to impose such a test; that the only function assigned to them by the Convention was to examine and report upon our credentials; and that if the resolution was adopted they would refuse to do the duty imposed upon them, and assume to do what was utterly beyond their authority. It was further urged that the application to the delegates from New York of a test which the Convention had already refused to apply to the delegates from any other State, and the exaction from us, who might not be members, of a pledge which the Convention refused to exact of themselves, who were members, would be so degrading to us and so insulting to our constituents that we could not submit to it consistently with our self-respect or with fidelity to the honor of the State which we represented. The humiliation inflicted on New York by such a test, if she had been degraded enough to submit to it, was enhanced by the consideration that she to whom it was applied had never made any declaration inconsistent with her support of the nominees, while Virginia, Alabama, Georgia, and Florida, to whom it was not applied, had solemnly declared they would not support the nominees unless they should expressly and publicly disavow opinions which New York was known to entertain on the questions of difference between themselves and her. The vote on the resolution imposing the test was then taken, and the result was a tie; when the member from Delaware came in, and decided the question in favor of adopting the resolution. Among those who voted for the resolution was General Commander, of South Carolina, who was appointed at a meeting of a few persons in a single parish, and was allowed to cast nine votes in the Convention, while the three millions of people of New York were wholly excluded from a voice in its proceedings. Another was Mr. Acklin, of Alabama, who was under instructions from his own State so peculiar as to demand a brief

notice. The Convention of Alabama passed resolutions declaring that Congress has no power to restrict the introduction of slavery into any Territory which might be acquired; that the people of the Territory have no such power; that any individual has a right to carry slavery into any such Territory without reference to the existing local law. They also pledged themselves that they would "under no political necessity whatever" support any candidate for President and Vice-President who was not openly and avowedly opposed to the exclusion of slavery from any Territories, either by act of Congress or by act of the people of the Territory, and declared that these resolutions should be considered as instructions to their delegates.

It is not necessary to say that there is scarcely a man in New York, or any other free State, who is not brought within this comprehensive proscription. And it was the vote of a delegate who was under instructions and pledges which would render it impossible for him to support, even if nominated, any candidate who shares the convictions of the people of New York dissenting from the sectional test sought to be incorporated into the Democratic creed, or any candidate whom she could desire to present or to whom she could hope to give her electoral vote, that carried the resolution refusing to examine our credentials, except on condition that we would pledge ourselves to support candidates of different principles from our own, even if denied all voice in their selection.

Mr. Bayly, of Virginia, and Mr. McAllister, of Georgia, whose constituents had made similar declarations, also advocated and voted for this proposition. The extraordinary spectacle was thus presented of a refusal to examine our credentials unless, even if excluded from a voice in the selection of candidates, we would take a pledge which those who imposed it upon us, and who would have a voice in the selection of candidates, were themselves instructed not only not to take, but even to disobey!

Under these circumstances we had no hesitation as to our duty. What respectable men on the committee avowedly

regarded as degrading to ourselves and unfaithful to you, we could not have consented to do, if we had entertained or thought it possible for honorable men to entertain doubts on the subject.

We had not been commissioned by you to make experiments on the as yet unsullied character of our State, or to try how far we could go in degrading submissions without forfeiting the respect of impartial and just men. And when those who were to be made the unwilling instruments of attempting to dishonor you through your representatives recoiled from the unworthy office, and spontaneously expressed their indignation at the test sought to be imposed and their scorn of those who would submit to it, we could not have stood there, as men falsely claiming to be your representatives did, to argue down the honest repugnance of fair men to do what they thought would degrade us and betray you who had clothed us with our high trust. But we did not need the suggestion of others, however respectable, to inform us what was due to the honor of the Democracy of New York. Deputed by you to confer with our political brethren of other States in respect to the great concerns of our common country, we knew that you would never suspect us of entering upon that conference except on terms of equality and reciprocity. Great as New York is in population, in material wealth and power, and in all the elements of civilization and the moral influence which attend upon it, she will never claim more, nor will she submit to less, than equality with her sister States. The conditions on which she enters into political association with them must apply to the other parties as well as herself; the obligations which bind her must bind them also.

Governed by these views of your honor and our duty, we returned to the committee the following reply: —

"The delegation of the Democracy of the State of New York to the Baltimore Convention respectfully protest against the decision of this committee that before entering upon the examination of the evidence of their right to seats in the Convention, and before

they have become members of that body, they shall pledge themselves to the decisions of the Convention and support its nominees. They would feel themselves unworthy to represent the Democracy of New York if they could submit to a decision which would impeach the integrity of the representative, and which would dishonor their State and subject its delegates to a condition which the Convention expressly declined to impose upon the delegates of any other State in the Union prior to their admission. The delegates of the Democracy of New York must be admitted to the Baltimore Convention unconditionally, or not at all.

"C. C. CAMBRELENG, } *In behalf of*
"J. WILSON, } *the delegates.*"

The committee debated a motion for reconsideration through the following morning, and adopted a resolution declaring the spurious delegates entitled to the seats, on the express ground of their consenting and our refusing to take the test.

In the afternoon the committee reported the resolution, and a debate upon it ensued. The Convention determined to hear a discussion of the question of admission or rejection, and allotted to it four hours.

On the next morning the hearing of our case was begun by a speech of Senator Dickinson on behalf of the irregular delegates. The great characteristic of his speech was an appeal to the Convention to reject us because of the position assumed by the resolution of the Utica Convention in regard to the extension of slavery to Territory now free, and he read for that purpose a part of the resolutions adopted by that body. The subject was in this manner first introduced by him, and afterward by Mr. Foster, who repeated the appeal, with strong expressions of favor, of enabling the sturdy freemen of the South to go, "with their associations," into the newly acquired Territory; or, in other words, to plant slavery in Territories now free, and thus virtually to exclude the free white laborers of the North from those Territories, except on the hard condition of their submitting to be degraded to an association with slaves. This appeal was replied to by the speakers in behalf

of the regular delegates, and the position of the New York Democracy on the question stated; and to make it more accurate, the resolutions adopted by the Utica Convention were read, as an authentic exposition of the sentiments of the body by which we had been delegated.

In the subsequent discussion by members of the Convention who opposed us, our title to the seats was not even alluded to, except by one of the speakers, who had in committee voted for and advocated the resolution refusing to go into the investigation, and rejecting us because we would not take the test, and who now devoted his speech to a justification of that prejudgment of our case. All the other speakers who advocated our rejection, placed it on the express ground, either that we would not take the test, or that the opinions of our constituents are opposed to the extension of slavery to free territory as declared by the Utica Convention; and the speakers who advocated our reception, distinctly recognized the fact that our rejection was to be placed upon these grounds, and protested against such injustice and oppression.

The report of the committee was amended so as nominally to admit us, but to neutralize our voice in the Convention by the admission of an equal number of other persons not delegated by the Democracy of New York; it was then adopted, the vote on the question being almost purely sectional. The decision of the Convention having been thus made, the regular delegates retired, and prepared the following protest, which on their return was presented to the Convention: —

"The undersigned delegates from New York respectfully state that we have deliberately considered the resolution adopted this morning, admitting thirty-six individuals who avow themselves hostile to the regular Democratic organization in New York to take seats in the Convention with the regular delegates, and thereby neutralize the vote of the State.

"The State Convention held at Utica, which, in accordance with the invariable usage and expressed wishes of the Democracy of the State, appointed the undersigned to represent them in this Convention, adopted an address, in which the following sentiments

were expressed: 'A reference to the proceedings of the Democratic electors by whom we were chosen will show that a vast majority of the Convention which delegated us to carry out their wishes have expressed their preference, if not instructed their delegates, in favor of the State system; and believing, as we do, that representative fidelity is the life of our political system, and that the highest obligations of duty and honor require the delegate to obey the expressed wishes of his constituents, we have had no hesitation in proceeding to the choice of thirty-six delegates to represent you in the National Convention at Baltimore. The individuals selected are believed to be, one and all, eminently trustworthy; we have not felt at liberty to hamper them with instructions, but entertain the hope that they will carefully ascertain and faithfully carry out your wishes in their conduct. In so doing they will consult the honor of the State and the true and permanent interests of the Republican party of the State and of the Union, and thus best promote the prosperity and happiness of the American people.'

"A caucus of the Democratic members of the Legislature, convened at the Capitol on the 12th of April last, at the close of their session, to put forth an address and resolution to their constituents, responded in the following language to the action of the Utica Convention in reference to the appointment of delegates to the National Convention: —

"'If we have been in any degree successful, we may claim to have shown that the views entertained by the Democrats of New York, so far from presenting any excuse for their proscription by their political associates, are those which the highest obligations of constitutional liberty require them to maintain. They have sent, in conformity with established usage, thirty-six estimable and influential citizens to communicate their wishes in regard to the approaching Presidential election to the representatives of the Democracy of other States who are soon to assemble at Baltimore. Their desire is kindly and dispassionately to confer with their brethren of the Union, in the hope of securing the safety and success of that great and patriotic party at whose hands the cause of true freedom has uniformly received a strong, steady, and generally successful support.

"'They regret to be apprised that a design should exist in any quarter to exclude their delegates from such conference, or to neutralize their voice by associating with them persons not delegated by the party and not speaking its sentiments. We are conscientiously satisfied that there is no room for an honest difference of

opinion in regard to the right of the delegates selected by the Utica Convention to sit in the National Convention which is to assemble at Baltimore for the nomination of Democratic candidates for President and Vice-President. If a question is made as to their right, it must be decided, not compromised. Those delegates should not be insulted by the request that they should yield one particle of the weight to which, as the representatives of the Democracy of this State, they are justly entitled. Expedients resorted to where no difference of opinion existed on either national questions or national candidates, and by which a decision of the controversy, purely local, was postponed until such difference should arise, can have no application to such cases.

"'Neither of the distinguished Republicans selected by the Utica Convention to represent the Democracy of this State required the instructions of that body to know that perpetual disgrace would await him if he surrendered any portion of the high trust confided to him, and no instruction was therefore given. The simple question, if any, which the Baltimore Convention will be called upon to decide will be the exclusion or admission of those delegates; and it may be proper for us to add that such decision appears to us of so momentous importance, from our conviction that whilst past experience has shown that the Republicans of this State will submit to great injustice for the vindication and establishment of their principles, the exclusion, actual or virtual, of their representatives, for the purpose of overthrowing their principles, is an imposition which would be fatal to those who should practise it.'

"The undersigned regard these sentiments as indications of the wishes of their constituents which they cannot overlook. But other considerations also have influenced them in forming their decision. Without stating them in detail, it is sufficient to say that the undersigned are entitled to seats exclusively, or not at all. If the thirty-six individuals before referred to are the representatives of the Democracy of New York, we ought not to be admitted to destroy their efficiency. They and our constituents differ essentially in political principles and action.

"If this Convention recognize as the representatives of the Democracy of New York men among whom may be found those who opposed the Independent Treasury; who were hostile to the debt-paying policy of our State in 1842; who lobbied against the Tariff of 1846; who fought with desperation against calling a Convention to revise our State Constitution; who denounced the result of the labors of that Convention; who treacherously defeated Silas Wright, the regular candidate for Governor in 1846; who attempted, at the

Syracuse Convention in September last, to subvert the organization and annul the old usages of the party; who, living in a State which owes its greatness to the dignity and influence with which its liberal institutions have clothed the arm of free labor, unblushingly advocate the extension of slavery into territory now free, and upon that ground claim to be entitled to seats in this Convention as the representatives of the New York Democracy, — we have no hesitation in saying that if we should consent to divide with them our seats and our votes, we should betray the principles and forfeit the confidence of the pure and fearless party whose commission we bear. We therefore respectfully decline to take seats upon the terms proposed by the Convention."

The delegates from the other States had meanwhile proceeded to nominate General Lewis Cass for President, and subsequently nominated General William O. Butler for Vice President. These delegates, — a single individual of whom cast the whole vote of his State, — by a decision which neutralized the votes and influence of your representatives, which is denounced by both the contesting parties as unjust, and which to all reflecting minds must appear absurd, virtually excluded New York from any share in their deliberations. The nominations which have been made by them are not, therefore, nominations for New York; they have been made by a body in which she was not represented, without allowing her any voice in the deliberations from which they have resulted, and without her agency, assent, or concurrence. The Democracy of this State are, therefore, thrown back upon the alternative of either having no regular candidates for these important public trusts, or of nominating for themselves through their own legitimate State organization.

Coming ourselves instinctively to this conclusion, we were led to consider the question whether, in the contingency which had arisen, we had the power and were called to the duty of submitting for your consideration nominations for the high offices in question. Our reflections satisfied us that it was fittest in itself, and most accordant with the right construction of our delegated powers, to refer this important matter to the

source of our authority. We were appointed to meet the delegates of other States in a National Convention, and, with the aid of such other delegates, after interchange of views, to make, in conjunction with them, a National nomination. Failing by the action of the delegates from the other States to do this, we resolved that we would refer the subject to our constituents, with a report of the efforts we have made to execute the trust with which we were charged and the means by which its complete performance has been defeated. When and to what body representing these constituents these matters should be submitted, is a question of much interest.

The State Convention by which we were appointed, after accomplishing the purpose for which it was assembled, adjourned without day. The Legislature is not in session, and will not again convene during the year, so that the Democratic members of that body cannot meet together in caucus to receive our Report (even if it were proper to make it to them), or to recommend the election of a State Convention for the purpose.

The State Convention which has been already called, in conformity to the time-honored usage of the Democracy of this State, to be held on the thirteenth of September next, for the purpose of nominating Presidential electors, as well as candidates for Governor and Lieutenant-Governor, and which is, beyond all doubt, the only authority competent to make such nominations in a valid form, will assemble with regular and full powers.

We have thus laid before you, fellow Democrats of New York, a plain and unvarnished account of the treatment you have received in the persons of your representatives from delegates from the other States, with whom we were deputed to form a National Convention, and of the steps taken by us to protect your rights and our own in the several conjunctures in which we have been placed. To your calm and dispassionate judgment, to your justice, fidelity, and honor, we now refer this whole matter, together with the momentous inter-

ests, State and National, present and prospective, with which it is allied.

C. C. CAMBRELENG, JARED WILSON, } *Delegates from the State at large.*

1. PLATT WILLETS,
2. MINTHORNE TOMPKINS,
3. JOHN A. KENNEDY,
4. ROBERT H. MACLAY,
5. W. F. HAVEMEYER,
6. SAMUEL J. TILDEN,
7. RAY TOMPKINS,
8. GOUVERNEUR KEMBLE,
9. ROBERT DENNISTON,
10. JOHN D. OSTRANDER,
11. JOHN P. BEEKMAN,
12. JOHN J. VIELE,
13. PETER CAGGER,
14. JAMES S. WHALLON,
15. AMOS A. PRESCOTT,
16. PLATT POTTER,
17. WILLIAM C. CRAIN,
18. PRESTON KING,
19. A. S. GREEN,
20. WARD HUNT,
21. L. J. WALWORTH,
22. OLIVER C. CROCKER,
23. JAMES W. NYE,
24. WILLIAM FULLER,
25. THOMAS Y. HOWE, JR.,
26. JOHN W. WISNER,
27. JAMES C. SMITH,
28. HENRY R. SELDEN,
29. J. S. WADSWORTH,
30. A. G. CHATFIELD,
31. WILLIAM H. TEW,
32. JOHN T. HUDSON,
33. JAMES R. DOOLITTLE,
34. GEORGE H. STONE,

Delegates from the Congressional Districts.

XV.

In accordance with the recommendation of Governor Hunt, a Bill was introduced into the New York Legislature in 1851 to anticipate the revenues of the canals by the issue of certificates to the amount of nine million dollars, to be appropriated to the immediate enlargement of the Erie Canal. This measure was so manifestly in violation of the provisions made in the Constitution of 1846 for the gradual enlargement of the canals, and in conflict with the well-considered public policy which time and experience had fully vindicated, that a general feeling of alarm and indignation was aroused throughout the State, especially among that portion of the Democratic party which had been most active in the canal-reform measures of 1846. Among the prominent men whose opinions of this measure were sought and whose influence in defeating it was successfully invoked, was Mr. Tilden, who, in the following letter, addressed to Mr. William Cassidy, at that time the editor of the "Albany Atlas," helped to give the project a blow from which it never recovered.

THE ANTICIPATION OF CANAL REVENUES AND THE CONSTITUTION.

NEW YORK, April 7, 1851.

DEAR SIR, — Your letter found me, as you supposed it would find me, "immersed in business, and having neither leisure nor inclination for politics;" indeed, more oppressed for a few days with professional and private engagements than at almost any former period of my political life. But your call to "find or make the opportunity" to contribute what I am able "to expose the character of the Canal Bill" now pending before the Legislature, and being hurried so rapidly to an enactment, is one to which, ably as that duty has been performed in the columns of your journal, and will be performed by our friends in the Senate, I cannot disregard. The obligation to maintain the provisions of the Constitution in regard to the State finances; to adhere to the wise and salutary policy which they established; to preserve our faith and honor, solemnly pledged to the public creditor; and to rescue the noble trust for the million and for posterity which our State works will form when disencumbered from the debts that now press heavily upon them, — is common to us all. Besides, I owe to the memory of Michael Hoffman, by whom these provisions of the Constitution were mainly prepared, and to whom they are an imperishable monument, — and scarcely less to the memory of his friend [1] and ours who, during the sessions of the Convention, lent to the executive station the lustre of his transcendent personal qualities, and at whose instance I

[1] [Silas Wright, of New York, elected twice to the United States Senate, and Governor of the State of New York in 1844. — ED.]

undertook to aid, according to the measure of my inferior abilities, the labors of Mr. Hoffman, — to show that his work was not so imperfectly done that the measure proposed can ever be invested with the authority of law so long as the Constitution itself shall remain unchanged.

Until I received your letter and a similar one from Mr. Burwell I did not suppose that the Legislature could be induced to adopt Governor Hunt's recommendation. I have just succeeded in getting a copy of the Bill and Report, together with the opinion of Mr. Spencer,[1] concurred in by Messrs. Stevens and Lord, upon which I shall make some observations, although the period is so short before the question will be decided, as far as the Legislature is concerned, and my engagements are so numerous that I cannot hope to do full justice to the discussion.

If the Constitution is to be violated under the advice of counsel, Mr. Spencer has qualifications to be a leader in the case which none will dispute and few can rival. He has addressed himself to the work with an enthusiasm worthy of that class of our Whig brethren who, under the impulse of Mr. Secretary Webster, are just now manifesting their profound sense of the sanctity of constitutional obligations by requiring us, — not to pay our just debts, but to deliver an innocent, perhaps free, neighbor to bondage. He has invented a mode of borrowing nine millions of dollars without owing anything, and has found authority for carrying through such a fair business transaction, in behalf of the State, in the third section of the seventh article of the Constitution, which provides that, —

"After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals to the Treasury of the State, on or before the thirtieth day of September in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of

[1] [John C. Spencer, one of the Revisers of the Statutes of the State, was Secretary at War in 1841, Secretary of the Treasury in 1843, and died in 1855. — Ed.]

the State; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such manner as the Legislature shall direct, to the completion of the Erie Canal enlargement, and the Genesee Valley and Black River canals, until the said canals shall be completed."

The question is, — Can this surplus of the canal revenues be constitutionally anticipated and applied to the purpose specified, an indefinite period before it accrues or is received?

Mr. Spencer enters into an elaborate criticism of the word "applied." He seeks to extract light as to its meaning from that inexhaustible legal controversy which never yet shed light upon anything, — whether the statute authorizing a trust "to apply" rents and profits to "the use of a person" authorizes a trust "to pay over to" that person; and he concludes that "the expression" apply, "so far from being a direction to pay out or expend, is with difficulty made to include such an act!" He is very doubtful whether the mandate of the Constitution that certain surplus revenues "shall be applied to the completion" of the canals permits them to be "paid out" for such things as building a new lock or enlarging the prism of a canal, but is quite clear that it does authorize those revenues to be used to borrow money upon, to be afterward "expended" for such purposes!

Mr. Spencer's construction of the third section.

Most men would come to exactly the opposite conclusion; would think the right to pay out the money in the actual execution of the work, "to the completion" of which it was to be "applied," undeniable, and the right to use it to borrow money upon at least very doubtful.

As a mere verbal criticism there is little accuracy in Mr. Spencer's explanation of the legal use of the word "apply," and little analogy between that use and the language of the Constitution. It is a novelty to find a man so hackneyed in the controversies relating to the doctrine of trusts saying that the phrase "to apply to the use of" is with difficulty made to include the act of expending or "paying out." The exact

objection to the trust "to pay over" is, that the trustee cannot be said "to apply to the use of" a person, because he does not exercise the active duty of "paying out" and "expending." Nor is this technical phrase substantially the same as that in the Constitution. To apply to the use of a person is of itself a grant of much more extensive powers than to apply to the completion of an unfinished structure. Nor does the trustee, in the case cited, derive all his powers from the intrinsic force of that language. The persons for whose benefit active trusts are allowed to be created are usually incapable of administering their own affairs, and society has therefore assumed the care of their interests. An elaborate and complex system of statutory and common-law regulations has grown up, defining the powers and duties of trustees; and from these regulations many particular authorities are derived which could not, independently of them, be inferred from the words designating the trust.

Mr. Spencer not only refers to a use so purely technical to fix the general meaning of the word "apply," but argues that it includes the independent and substantive power to anticipate and pledge, because trustees, under the technical phrase of which this word forms a part, sometimes possess such authority; that it is not only consistent with, but actually confers such power. Now the fact that it is generally necessary for the trustee to apply to a court to sanction the exercise of such authority shows that, even in this case, the power is not derived from the intrinsic force of language much broader than that of the Constitution, but from accessory circumstances of the general law. But if the verbal criticism of Mr. Spencer were correct, nothing can be more fallacious than to interpret common language by a use purely technical. The tendency to do so is the vice of the legal profession, and especially of minds more acute in discovering analogies than capable of determining their relative values.

The Convention cannot be supposed to have been as much versed in the learning of trusts as this expounder of their

works. But those of them at least who had been employed in making a blade of grass grow where none grew before might console themselves that they had not lost the ability to understand ordinary language in its obvious meaning. They did not suppose that, in using a very common word, they incorporated into the Constitution any of the voluminous treatises on trusts which grace our law libraries, or conferred upon the legislative agents the special authorities sometimes exercised by trustees. They knew what they meant, and expressed it in apt words, used in their ordinary and correct signification.

Its right construction.

They said, not that the surplus should be "set apart as a fund to promote the completion," not that it should "be applied to the benefit of the canals," — no such loose and general phrase; but that it should "be applied to the completion" of those works known at the time to be unfinished, but in progress. If they intended the direct expenditure of the surplus in the actual construction of the works, what fitter or more exact language could they have selected? They were familiar with the distinction between appropriating as a fund and "applying" on a work in progress, both of which they provided for in this very article, in carefully discriminating language. They understood that the discretion conferred for managing as a fund and for applying a revenue to complete an unfinished structure are of a very different nature. They could not have manifested their intention that this surplus should not be held or managed as a fund to borrow money upon, or to promote the general object in collateral or indirect modes, more clearly, except by an express prohibition.

Their language, by its obvious signification, not only excludes any such use of this surplus, but was also adapted to the practical operation of the provisions under the system then existing of administering the canals and keeping the public accounts. It first requires the payment of the expenses of collection, superintendence, and ordinary repairs, and the sums devoted to the two sinking-funds which had been created. It says, "after

paying" them, — not after providing for, not after estimating or deducting or reserving for, but after actually paying them, which could only be done when the revenues had been received. It next requires a payment to the Treasury, or general fund, as it is called, of an annual sum. It says here, also, shall be "paid," and paid "on or before the thirtieth day of September in each year." It then requires that "the remainder of the revenues of the said canals shall, in each fiscal year, be applied to the completion of the Erie Canal enlargement until," etc. When applied? Not till after the revenues are actually received, and the three classes of payments to which priority is given are actually made. It is a monstrous perversion to say that such language was intended to authorize or permit that surplus to be anticipated and applied an indefinite period of years before the revenue should accrue or the surplus be ascertained. Applied how, and by whom? Not by the Legislature, but by the executive officers, the canal commissioners; it would be as the law then was and now is, "in such manner as the Legislature shall direct." Discretion there is here, doubtless, in the apportionment among the three canals, and in directing the expenditure for the different structures, the various parts, and the numerous details of each, — an ample field for the exercise of a discretion which Mr. Spencer so strongly claims in behalf of the Legislature; but discretion in directing the application of the surplus when realized, and not in expending it an indefinite period beforehand, or treating it as a fund to borrow money upon, to financier with, or to "use in any way" which might conduce ultimately to the completion of the canals.

Its history.

If anything more than the plain import of the language to every mind unsophisticated by technical subtleties were needed to show the meaning of the Convention, it can be found in the history of this section. Its phraseology, so far as affects the present discussion, was borrowed from a provision reported by the committee and drawn by Mr. Hoffman with direct reference to a distinct plan for the

progressive improvement of the Erie Canal, by the application of the surplus, as it should be realized, "in each fiscal year."

Mr. Spencer seems to suppose such a method of completing the canals so inadequate that the Convention could not have intended to enjoin it upon the Legislature. With deference to those financial geniuses who think that nothing wise or effectual can be done with their own money, or without borrowing other people's, I must entertain a different opinion. The plan contemplated by the committee was the same as that on which the enlargement of the Erie Canal was originally begun; and it was believed by at least two members of the committee that if that plan had been adhered to and wisely executed, we should, in 1846, have been in the enjoyment of nearly all the benefits of the finished enlargement, with the canals free from the incumbrance of five and twenty millions of debt. In such a condition we should have been able to strike off, not merely a small part of the two fifths of the whole cost of transportation which went to the carrier as freight, but nearly all of the three fifths of that cost which the State was compelled to exact as tolls, in order to pay the interest on improvident "anticipations" of future revenues. It was therefore not in authorizing new mortgages, — it was not even in expending actual income upon the improvements which we did intend adequately to provide for, — but in discharging the existing liens of the public creditor, that our power was most clearly seen to make the Great West tributary to the grandeur of our State and the wealth of our citizens, by the blessings we should confer upon it, — to cheapen exotic necessaries to our remote interior, and to cheapen bread to our crowded cities.

How the canal was practically enlarged.

Thus warned how much could be lost by the improvident expenditure which is the characteristic of easy and eager borrowers, whether States or individuals, the committee had learned also how much could be accomplished by that wise application of moderate sums which is the characteristic of those who pay as they go. The original excavation of the Erie Canal had been, in some parts of it,

considerably less than the four feet required by law; and the brilliant financiers who encumbered it with its present debt were too busy in planning magnificent improvements; in borrowing money to make them, and in estimating imaginary incomes with which to pay the loans and enrich the State, to attend to the meaner duty of cleaning out from the channel the gradual deposits of wash from its sides. In the last year of their administration, when thirteen millions had been spent on the enlargement, in beginning everything and finishing nothing so as to be available; when the works had practically ceased because the Treasury was inadequate to the current expenses, and could no longer borrow; when the credit of this great State had fallen so low that its six per cents were selling at two thirds their present market value, — the inconveniences from such obstructions to navigation became so great that the ordinary time of a trip from Albany to Buffalo and back increased from eighteen to twenty-two days, and the Canal Board for the first time restricted the size of the boats, by prohibiting the use of any drawing more than three feet of water. Half a year afterward, Mr. Flagg was restored to the administration of the department. He repealed this restriction, began to bottom out the canal and raise its banks, and imparted his characteristic efficiency to its general management. During the four years that intervened until the meeting of the Convention, the canal became able to accommodate boats of over eighty tons, and, notwithstanding the smaller boats were generally continued in use until they wore out, the actual average of the down cargo had nearly doubled, and the price of freight had experienced a great reduction. The engineers, on whose official reports the enlargement was originally authorized, held out the promise of a diminution in the cost of freights of about 45 per cent in a canal of seven feet by seventy. One of them estimated that 35 of that 45 per cent reduction would be made by the use of a boat of seventy-nine tons in a canal of six feet by sixty; a second that 40 per cent of it would be attained by a boat of one hundred

and three tons in a canal of such dimensions; and the third, that it would be entirely realized by a boat of eighty tons in a still smaller canal. Beyond that, no one of them anticipated much reduction.

The canal had been improved by Mr. Flagg's judicious expenditure so as to give an easy transit to a boat of six and even nine inches greater draft. The size of the boat had increased, and it could be more heavily laden. The freights had fallen so as to realize, to a large extent, the results contemplated by the engineers from the enlargement as the maximum of economical transportation. This was a great mystery, especially to those whose experience had been in the opposite system of borrowing all they could, spending all they borrowed, and having the canal, in the meantime, grow smaller and smaller. It was freely charged that while Mr. Flagg resisted any law for the enlargement, he had actually been doing the thing of his own discretion under the head of ordinary repairs. But that item had not increased as fast as the business of the canals; and, carefully as he had been saving for the State, he was not supposed to have saved so much from his small salary as to have done it from his private resources. To satisfy a curiosity which was growing uncomfortable, the water in the canal was measured, during the sitting of the Convention, on the upper and lower mitre-sill of every lock, and sounded in the intermediate spaces, on each side of the boat, every four rods from Albany to Buffalo. Sworn returns, which were examined by members of the committee, and were open to the inspection of every member of the Convention, showed that the increase of the tonnage of the boat and the reduction of the freights had been effected in a canal of not more, and at some points rather less, than four feet of water for navigation.

The increase of the aggregate capacity of the canal had been not less remarkable and scarcely less mysterious. In the period to which I have before alluded, as memorable for its magnificent projects and its humiliating bankruptcy, — when the draft of the boat was restricted and the time of the trip

lengthened because the repairs necessary to keep the channel in working order were neglected, — the canal commissioners insisted that the speedy enlargement was not only a "measure of fiscal and commercial expediency, but of immediate and vital necessity." The ground of their urgency was, in their own language, that "there was a fixed and absolute quantity, to wit, 225,000 tons, which, if added to the descending tonnage (then 467,000 tons), would exhaust the remaining capacity of the canal," and that "any further increase of the trade must seek another channel." In 1842 the commissioners repeated these estimates, and said that experience had established their correctness.

Nevertheless the increase had, in the year before the Convention was held, been more than double that quantity, and for the year then current was evidently to be triple, and yet the whole business was done so easily as greatly to lessen the time of the trip. As a member of the committee, and in fulfilling an allotment of duties, I had occasion to discuss the capacity of the canal. After analyzing the representations as to detentions, crowds, and local obstructions, and showing that similar complaints had been loudly made within the first five years after the canal was completed, and when its business was comparatively inconsiderable, I admitted that it was difficult to measure the extent of the details with sufficient exactness to determine the aggregate result, but claimed that there was a test decisive of the whole controversy, — the comparative time of the trip from Albany to Buffalo and back; and I ventured to assert that the ordinary average time of the trip in 1846 was not longer than it had been in the year before the enlargement was first authorized, and when the down tonnage was scarcely more than a fourth of its amount in the current season; and this notwithstanding the boat, having more than doubled its capacity, could not be expected to be as easily handled or as rapidly moved. A fact so potent to dispel honest illusion and to silence misleading clamor brought instantly upon their feet two gentlemen, of opposite politics, — one of

whom had ably maintained the antagonist policy, and the other had been prominent in the administration of the canals, — to correct me; and unable to overcome their incredulity, I adjourned to procure the proofs. The next morning I submitted evidences from original clearances which had just been received at the office of the collector at Albany, and others received during the great pressure of business created by the foreign demand for breadstuffs at the close of the previous season, together with statements from towing and forwarding establishments, and citations from the official documents of former periods, which seemed to settle the controversy. As far as I know, the fact was not afterward called in question. I have adverted to it, and the grounds on which it rests, because I deem it important, and because the discussion of it was not reported.

How the capacity of the locks was increased.

The increase of capacity was to be, in a great degree, ascribed to the enlargement of the boat, the deepening of the water in the canal, and to general efficiency of administration. But there is another particular which merits especial notice. A practical limit to the capacity of the canal is in the power of the locks to pass the boats. At the time the enlargement was undertaken, their maximum power was supposed to be to pass one in about ten minutes. In 1841, when the commissioners thought that two hundred and twenty-five thousand tons, added to the down tonnage, would exhaust the utmost capacity of the canal, it was estimated to be able to pass one boat in a little over seven minutes. In 1843 a number of the locks at various points were watched and timed for the same twenty-four consecutive hours; and it was found that they passed the boats in from four to six minutes each. Something of these results may have been accomplished by manning and working the locks efficiently; but there was a more potent cause.

In the lock-gates are inserted paddle-gates, as they are called, through which the water is let in and out until the lock-gates can be moved. The main detention in passing the locks is in filling and emptying them; and the rapidity with which this

can be done must depend upon the construction of these paddle-gates.

Nobody condescended, so far as I could learn by a diligent search through a fearful library of official and scientific reports on the improvement of the canal, to pay much attention to them. While we were incurring an expenditure of four and twenty millions, and encumbering our noblest work with a mortgage that will for a generation rob it of its chiefest power to benefit the millions whose commercial intercourse with the world it might still enlarge and cheapen, — and doing this mainly on the ground of its inadequacy to its business, — these humble but useful servants were getting improved as they could. They felt no difficulty in doubling or tripling the capacity of the canal from what it was supposed to be when the enlargement was undertaken, almost without cost. They went on working silently under the feet of men whose eyes were in the clouds, and, by gradual approximations to what they were capable of, confounding all calculations as to the quantity of tonnage which the canal could accommodate.

About three miles above Schenectady is Alexander's lock. Through it must pass all the tonnage that concentrates in the Erie Canal on its way to tide-water. The superintendent had, at an early period, kept an account of its lockages, and from its power in this respect the commissioners, in 1841, had calculated the capacity of the canal. In 1846 it was an old lock, built with the canal itself, and single. There it stood, doing the business that came from both ways, and apparently never wearied with showing how much less liberal were Mr. Ruggles's[1] calculations of its power than his estimates of business, surpluses, and sinking funds. In analyzing the experiments of 1843, — the manuscript reports of which were found in the Canal Department, — I observed a whole hour in which the average time of its lockages was three and a half minutes; and

[1] [Samuel B. Ruggles, of the New York Bar, one of the canal commissioners upon whose enthusiastic estimates the canal enlargement had been recommended. — Ed.]

I learned from the superintendent, whom Mr. Bissel was good enough to send down to me, that its paddle-gates were not of the best construction. He added two at one end of the lock, not finding it convenient to do so at both, and reported a saving of twenty seconds. During the session of the Convention, while the depth of water was being measured, the time required to fill and empty the locks and to pass the boats was also tested; and it was ascertained that, with the best paddle-gates and apparatus, it could be done easily in three minutes.

If the canal were able to give easy transit to boats of double the tonnage on which its maximum capacity was calculated by Mr. Ruggles and Mr. Spencer in 1841, and the locks were able to pass them in one half the time they supposed to be required, the capacity of the canal would be quadrupled. It has been, in fact, tripled between the period when they left its administration and the session of the Convention.

Hence it was able to accommodate not only the increase from the 467,315 tons it was carrying at the time of this estimate, to the 691,315 tons which were to exhaust its utmost capacity, but to 1,107,270 tons in the year of the Convention, and to 1,431,250 tons in the year after. More than four times the increase predicted as exhausting the maximum capacity of the canal, and more than three times the actual aggregate when that prediction was made, were thus achieved under the administration of Mr. Flagg,[1] with additional facilities for business, and without much swelling the account of ordinary repairs. It is remarkable that Mr. Ruggles — whose name heads the Report of the Canal Commissioners which founded on calculations so fallacious the disastrous policy that had almost bankrupted the State — has published an elaborate letter in favor of the present project; and Mr. Spencer, whose name heads reports of the Canal Board adopting the same general views, has published a labored argument to establish its constitutionality.

[1] [Azariah C. Flagg, for many years State comptroller. He was subsequently twice elected comptroller of the city of New York. — Ed.]

The experience of such errors, which aroused the people to assemble in their delegated sovereignty to take from all future agents the power to repeat them, seems to have been lost on these gentlemen. The latter gentleman gravely argues that the Convention could not have intended to restrict the Legislature to the expending of the surplus as it actually accrues, because it would be so inadequate; forgetting how much more Mr. Flagg was able to accomplish, by a tenth of the present surplus wisely applied in that manner, than had been done by an expenditure of "anticipated revenues" which emptied the Treasury, prostrated the credit of the State, and entailed oppressive mortgages upon the canals.

How the enlargement might be completed without borrowing.

Looking forward to the future, the committee saw that these processes, so efficient and so inexpensive, were not exhausted. The average tonnage of the boats would be brought up nearly one third as the old were gradually supplanted by new. The paddle-gates could be improved at very slight expense. The water could easily be deepened a foot by bottoming out the canal to the level of the mitre-sills of the locks, and by strengthening its banks. The enlargement could be made, to a considerable extent, immediately available by judicious improvements at particular points. A second line of locks, of the enlarged size, could be brought into use the whole distance between Albany and Syracuse — where the main pressure of business is — by an expenditure of three hundred thousand dollars. One such line might next be completed to Buffalo; and then might be added whatever convenience should result from doubling the tier of enlarged locks through the mountain ridge at Lockport. An expenditure of two millions and a half — the engineers would say much less — could accomplish these improvements, and would put us in immediate use of the boat of one hundred and twenty tons, and again triple the capacity of the canal. Most of the expenditures would be in execution of the general plan of the enlargement, and the residue would be so small as to find an equivalent in the immediate results. If the

business did not increase, it would be more than accommodated; if it did, as the committee expected, and it was not found necessary to accelerate the inevitable reductions in the tolls, that increase would furnish a surplus, not only adequate to secure all incidental benefits, but even ultimately to complete the work on a scale of costly magnificence.

The risks of incurring more debt to complete it.

The ability of the canal to do its accumulating business from the very outset being thus adequately and certainly assured, the motive which was mainly urged in favor of the enlargement, and was most influential in its adoption, was fully answered. The accessory benefit of a reduction in the freights further than was already realized, or could be by these improvements, was not so sure in its extent that the attainment of it at an earlier period was an equivalent for the inevitable evils of a large increase of the debt, for the loss of the certain and extensive power to cheapen transport by lessening the tolls, for the accumulation of the annual charge for interest which already amounted to thirteen hundred thousand dollars and consumed nearly all we could apply on the debt, for the risk that future anticipations might be as inefficiently applied as the former had been; nor — in case, through any of the errors to which human calculations are subject, they materially lessened the cost of transport — for a deprivation of the ability we yet possessed to effect that result in other modes, or gradually to discharge the existing mortgages. Anticipations of income or profits to such an extent that the interest on the amount expended presses closely on the whole income or profits expected, usually prove fatal to individuals, and will do so until human nature is changed, and hopes become more real than facts. Experience has shown that they are not less ruinous to States. Not even the unmatched power of the Erie Canal to realize sanguine conjectures as to its business was able to overcome miscalculations as to cost, or misapplications of expenditure, or more obvious difficulties which should have been foreseen in such a system of financiering, so as to attain any of the benefits of the enlargement, or to give to the sinking-

funds, which figured so conspicuously in the original plans, any existence, except in the imaginations of Mr. Ruggles and Mr. Spencer. But the anticipations of its future revenues had created enormous expenditure for enterprises which ought never to have been undertaken, for the partial construction of works at extravagant prices, without making what was done available, and for interest on such misapplications of borrowed moneys, — in all, an actual waste sufficient to have enlarged the Erie Canal in a costly manner, and without a debt. They had encumbered it, as yet unenlarged, with an annual charge for interest which, added to the surplus, would have been as much as the State could have applied economically or wisely to such objects, besides creating a liability for annual instalments of principal for a generation to come.

Motives and intention of the Convention.

With such convictions as to what had been lost by anticipations of future revenues, of how little had been accomplished by the large amounts of them expended, of how much had been done by the wise application of small sums of accruing revenues, and how much could still be achieved by that policy, — in the presence of such an experience and of such facts as I have adverted to, the Report of the committee was matured. Need I say that it intended not to authorize, not to permit such anticipations for the future? It contemplated the policy of applying the surplus, as it should accrue, to the public works, in such manner as to make the expenditure available at the earliest period. Its language in every part is consistent with such a policy, and with no other.

The same motives which dictated that policy, made the committee desire to secure to some extent a priority in the application of the surplus to the Erie Canal. To improve that work in such manner as to make the previous expenditure, as far as might be, available, seemed to be the most efficient way to complete it and to complete the other works. But so much apprehension was felt that the jealousy of other local interests would defeat such a proposition, that it was deemed prudent to confine the priority to a sum which was supposed to be amply

sufficient to make the improvements I have mentioned as contemplated by the committee, and to leave the rest of the surplus in the discretion of the Legislature. A provision was accordingly reported that the surplus of the revenues "shall, in each fiscal year, be applied to the improvement of the Erie Canal in such manner as may be directed by law, until such surplus shall amount in the aggregate to the sum of two millions and five hundred thousand dollars." An alliance of the friends of the unfinished laterals with many who professed to be the especial friends of the Erie Canal, but were unwilling to apply so much to the payment of the debt, aided by a few who wished to leave the matter to the discretion of the Legislature, indicated that the Convention would not give any such priority to the Erie Canal; and at length, after a prolonged struggle, a small majority was formed to extend the provision to all the unfinished works. The committee were instructed to substitute for the clause reported by them the provision that the surplus "shall, in each fiscal year, be applied, in such manner as the Legislature shall direct, to the completion of the Erie Canal enlargement and the Genesee Valley and Black River canals until the said canals shall be completed." That substitute was adopted, and constitutes the third section of the seventh article of the Constitution, in respect to which the present question arises.

Their construction of this section.

The material words of this section, — "shall, in each fiscal year, be applied," — are the same as those of the committee; and the words, "in such manner as the Legislature may direct," equivalent to those of the committee, "in such manner as may be directed by law." The language was chosen to command an application of the surplus from time to time as it should accrue, and was intended to confine the expenditure to such a method. The plan of its application in that mode was stated to and discussed by the Convention. The provisions restraining the anticipation of revenues and the contraction of debts had not yet been adopted; but this clause was universally understood, not only not to authorize, but absolutely

to preclude either. It was so intended by the committee, who carefully selected the words. It was so construed by all who supported the policy of the committee. It was so construed by all who opposed that policy. Whether it would have this effect was a question to which the attention of the Convention was drawn during all the discussions, — if that may be called a question in which all agreed. The amount of the surplus that could be applied under the operation of these words, and the time when that amount could be applied, was the exact point upon which all the great discussions on the finances, the sinking-funds, the support of the Government, and the completion of the several canals turned. Every man who discussed the appropriations for the payment of the debts or the provisions for the Treasury, both of which had priority, did so with reference to the amount of the surplus that would remain to be applied, "in each fiscal year," to the public works, and the influence which that amount would have in hastening or delaying the time of their completion. And constantly and carefully as the attention of all the members of the Convention was thus attracted to the meaning in this respect of the words employed, I defy the production from the reported debates of a single expression of doubt that their effect would be to preclude anticipations and confine the expenditure to the surplus as it should accrue. Under this construction, thus universally assumed and expressed in the Convention, this provision was adopted.

Mr. Spencer's argument from section five in respect to the sinking-funds.

Mr. Spencer argues that the principle of applying revenues by anticipating their receipt is recognized and sanctioned by the provision that if the sinking-fund shall prove insufficient to enable the State, on the credit of those funds, to procure the means to satisfy the claims of the creditors of the State as they become payable, the Legislature shall, by equitable taxes, make them sufficient perfectly to preserve the faith of the State; and that this provision construes the word "apply" to mean the borrowing of money on the mortgage of future revenues

and expending it in advance. Without entering into a full discussion of this clause, I will remark that any person who studies the whole section and its history will come to the conclusion that if such a construction were not precluded by other express provisions, it could not be justified.

The plan of the two sinking-funds originally reported by the committee made them nearly adequate to pay the debt as it should fall due. The largest deficiency at any time during the whole period for its extinguishment was about three and a half millions, and the average less than two. It was supposed that such an amount could, without much inconvenience, be managed by the fiscal officer by temporary advances from the specific funds belonging to the State, such as the school, literature, and other funds, which could be employed to purchase such stocks; by the application of the revenues of the Treasury or general fund; and by the borrowing of money under the express exception to the general prohibition of new debts which allows them to be contracted to the extent of one million of dollars, "to meet casual deficits, failures in revenues, or for expenses not provided for." If, however, these resources should at any time prove insufficient, the Legislature was commanded to have resort to the taxing power of the State to make the sinking-funds "sufficient perfectly to preserve the public faith."

All the provisions of the financial article, as reported, had aimed to effect an equitable settlement between the Treasury and the canals, which, from the revenues of the latter, should reimburse to the former the principal and interest of all its advances. This was deemed to be mere justice to such taxpayers as had not been benefited, and in some cases had been injured, by the construction of the canals, and was also designed, by a final adjustment of all their claims, to take from them every apology for quartering the Government upon the canals after the debt should be paid, — thus levying a special tax on trade and transportation, obstructing the reduction of tolls and cheapening of exchanges on the one hand, and

encouraging improvidence in the expenditure of the Government on the other. This settlement, as respects all the past, had been consummated by the provision from the revenues of the canals for the sinking-fund to pay the Treasury debt and for the annuity to the Treasury.

But as this section was known to require future advances to the canal sinking-fund, the same principle was to be applied to them also, and they were to be made "on the credit of the sinking-fund;" and it was immediately added, in the same section, that every contribution or advance to the canals, or their debt, from any source other than their direct revenues, shall, with quarterly interest at the rates then current, be repaid into the Treasury, for the use of the State, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt." No borrowing "on the credit of the sinking-fund" was contemplated, except that in which the Treasury of the State should be in some form the lender. The inconvenience which would be felt in "nursing along" the debt was urged as a reason for not adopting the plans by which a less sum was to be appropriated to the sinking-funds; and tables showing this effect were exhibited. When, at a subsequent period, that amount was reduced, the consequence in this respect does not seem to have attracted attention.

That construction of this section which authorizes anticipations by borrowing from other parties than the State for the sinking-fund, is to be itself justified; it cannot justify other anticipations which would operate to repeal express provisions of the Constitution, and produce practical mischiefs which could not result in this case. There is a certain technical sense in which the various amounts of stock held by different persons can be deemed to be separate debts, and in which a transfer or renewal of stock may be considered the creation of a debt as between the parties; but the Convention undoubtedly treated the canal debt and the Treasury debt as entireties, described them as they stood at a date specified, with a known

amount and an addition mentioned, and provided for them by the application of a fixed annual sum. If the borrowing from parties, other than the State itself, to meet the payment of the debts as they fall due can be justified, it must be on the ground that it is only a mode of prolonging the existing debts until the sinking-funds are able to pay them; that it is specially authorized in this case by the provision referred to; that it has no effect to increase the amount of the debts at the time the Constitution applied to them, or at any time afterward, when that amount had been reduced; that it does not create any debt against the State generally, or any mortgage or specific lien against any particular fund, revenue, or property of the State, beyond what existed before; and that the proceeds, being actually and immediately applied to cancel so far as they go the existing debt, the act is but a legitimate operation of the sinking-funds, which fully satisfies the provisions in regard to them, and does not violate the provisions which prohibit the contracting of debts. I do not know whether the scrip issued for the loan made last year for the sinking-funds confines the liability of the State to a lien on those funds; I do not think it of the slightest consequence. No decent man would say, if the sinking-funds were hereafter to fail, that the obligation of the State to pay from all its resources would be diminished by any such condition. And it is idle to say that there is any substantial analogy between an anticipation which neither increases the debt to be paid nor diminishes the sum to be applied to its payment, and an anticipation which adds its whole amount to the aggregate obligations to pay, whether in the form of a personal bond or of a mere mortgage.[1]

[1] Since my letter was written I have been enabled to see this scrip. It is in the ordinary form, and expresses a full general liability on the part of the State. This is, therefore, a debt, even on Mr. Spencer's construction. The authority of this anticipation of the sinking-funds proves too much for his argument; it would sanction, not merely a pledge of a specific revenue without further liability, which he cites it to justify, but a debt in the ordinary form, which he admits to be within the prohibition.

Prohibition of all appropriations and pledges more than two years in advance.

But, fortunately, the Constitution, by express provisions, has limited the power of the Legislature to contract obligations in either of these forms. The Convention found the power to expend not merely what was in the Treasury, but what could be raised by anticipations of the revenues of the State, mortgages of its property, and pledges of its credit in the ordinary form of debt, vested in the Legislature without limit, and so far delegated by it to the fiscal officer that the Government could get on almost without a legislature. It restrained both the delegation and the exercise of all these powers. It first provided that the executive officers should not apply until the Legislature had authorized them to do so by appropriating; declaring that no "moneys shall ever be paid out of the treasury of the State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law." So far, it but established a rule with which the public mind is familiar. But it proceeded to enact another, wholly new, and of vast importance; it added a prohibition that no such moneys shall be disbursed, "unless such payment be made within two years next after the passage of such appropriation act."

It was undoubtedly a part of the design of this clause to compel the Legislature to review, at brief intervals, the ordinary standing appropriations; but it had an object far more comprehensive and influential upon the action of the Government.

An appropriation is an authority or direction by the Legislature to the executive officers to apply money to a specified object; this provision limits the power of the Legislature to appropriate. Observe how it operates on money in the Treasury at the time of the appropriation. The Legislature cannot say that this money, if it remain in the Treasury two years, shall then be applied to the specified object, and cannot empower the executive officers so to apply it. Any command or authority to do so is void. Compliance with such command,

execution of such authority by the public officers, is illegal. The Legislature has no power over, can confer no power over, the disposition of this money, unless that power be exercised within the period limited.

Over money which does not come into the Treasury within the two years, or revenue which does not accrue within the two years, it at no time has the slightest control. There is no period when it can constitutionally command or authorize the executive officers to make any disposition of such money or revenue.

Can it, then, bind its successors to impose a command or confer an authority which, if imposed or conferred by itself, would be unconstitutional and void? It has sometimes been doubted how far one legislature can, in the exercise of a discretion clearly legitimate in its present operation, absorb to itself the future discretion of its successors. But I have never heard it claimed that one legislature — in a case where it can exercise no discretion, do no act — can absorb the discretion or control the acts of its successors, or that it can create a constitutional obligation that they shall do what it has not the constitutional right to do itself.

Our habits of thinking and acting have been formed in reference to our National and former State Governments, which were not subject to this restriction of their authority. They possessed the full powers of appropriating and borrowing. They consequently had the power, within their proper spheres, to make contracts which require, in order to fulfil them, the future exercise of the power of appropriation. In such cases an obligation of good faith was created to exercise that power when it became necessary.

But we must divest our minds of former associations in order to see the exact extent and effect of restraints so novel as those now imposed on the customary action of our State Government. The power to make contracts which require appropriations is limited by the same restrictions which limit the power to appropriate, except in cases where the specific and express power to

make the contract is granted; and in such exceptional cases alone can the obligation of good faith on future legislatures to make the necessary appropriations be created. A mere agreement that a future legislature shall, after the two years have expired, make an appropriation, would be an evasion of the limitation, and would impose neither a constitutional nor a moral obligation.

The power of appropriating is the most comprehensive that can be exercised over moneys or revenues, and includes every form by which they can be drawn from the Treasury. This restriction upon it applies to all uses of those moneys or revenues. It was intended to prohibit the application of them in any form more than two years in anticipation. "The object of this section," said Mr. Hoffman, in explaining it to the Convention, "was to prevent the Legislature from pledging the revenues for more than two years in advance, and to compel them to review them every year to ascertain what appropriations would be necessary."

This section contains other important restrictions. It is adverted to because I think its effect is not yet fully understood or adequately appreciated by those who have been accustomed to the former action of the Government, and because it illustrates the settled abhorrence of the system of spending by anticipation which induced the Convention to multiply and repeat its prohibitions, and not because I entertain any doubt that the particular form in which such anticipation of future revenues is now attempted is included in the restriction against the contracting of debts.

Mr. Spencer's distinction between the sale of a right and the contraction of a debt.

Mr. Spencer argues that the borrowing of money to be repaid out of a particular revenue pledged for that purpose, and without any further liability, is not the contracting of a debt.

The Bill of Mr. Allen, he says, "provides for the sale of an article; of a right to receive certain moneys expected to accrue from a specified source." This sale, however, is of a peculiar character. It does not enable the buyer

to acquire possession of the "article," or himself to collect "the moneys expected to accrue," or to identify his purchase as constituting a particular revenue, or a proportional part of such a revenue, or such a revenue for a specified period; but merely the right to claim of the seller a certain sum of money to be paid out of a revenue belonging to the seller. It would need a skilful lawyer to make the conveyance; and if the "article" were sold under price, I fear the courts would consider it a usurious debt.

Mr. Spencer contends that an obligation to pay a sum of money out of a particular revenue is not a debt because there is no further liability. He cites some adjudications of the courts; but they only prove that where property is pledged without a covenant to pay, there is no liability to pay beyond the property so pledged, — a proposition which nobody questions. They do not show that the obligation, with the remedy thus specially limited, is not a debt even in the general legal sense of that term. The word is sometimes used with a meaning as restricted as that for which he contends; but although I have not time to look for illustrations, I have no doubt that it will be found much more frequently employed, even in the statutes, with a meaning broad enough to include also the cases where the remedy is specially limited. At any rate, its legal use often concurs with the generic and comprehensive sense which is its ordinary and popular signification.

True construction of the prohibition of new debts.

The language of the Constitution is to be interpreted, not according to technical refinements which are exceptions to even the general legal meaning, but according to the common use of the terms. Mr. Lord, who does not seem to have given much consideration to the question, but is nevertheless more accurate than Mr. Spencer, confines his opinion to the conclusion that such a mortgage "is not a debt within the prohibition of the Constitution."

Where is the authority for claiming that the words of that prohibition were used in a narrow and peculiar sense? There

is none in the Constitution; there is none in the discussions that resulted in its formation and adoption. It speaks of debts direct and contingent, and then declares that "no debts shall be hereafter contracted," etc. It uses the word in the most comprehensive sense; it includes every kind of debt — every form of obligation to pay money.

The universally known purpose of the prohibition would be utterly defeated if the import of its terms could be so restricted by ingenious construction. If the Legislature may mortgage the surplus canal revenues by abstaining from the covenant to pay, why may it not also mortgage other special revenues and funds? The pledging of them will not import any more than the pledging of this does, — a general liability to pay. Why may it not mortgage the revenues to accrue from the auction duty? From the salt duty? There is the general fund, as it is called, which is the Treasury. Can there be any doubt of the power to anticipate a fund? Why may it not mortgage the revenue to accrue from the half-mill tax, and at last pledge the taxing power itself? No distinction has been made between these cases. If the construction attempted to be established in the first of them prevails, the Legislature may do in detail what it is expressly forbidden, on this very construction, to do in the aggregate.

A construction that thus fritters away the most important constitutional provisions deliberately adopted by the people, — that thus violates the general intention of the instrument, as established beyond a shadow of doubt, — is unworthy of rational and honorable men discussing an important question; it is unworthy of any but quibblers, whose zeal to establish a conclusion is greater than their respect for truth and right. In officers sworn to obey the Constitution, it is not only a violation of public trust, it is unconscientious and immoral.

The present Bill creates a debt.

But, even on a construction so repugnant to reason and right, can the present Bill be justified? It contains a provision positively commanding the Canal Board to make the revenue sufficient to pay the mort-

gage to be contracted. Is that to be considered as a part of the pledge to those who advance the moneys? It is undoubtedly designed to influence them to give the credit. If it is not to be maintained, it is a snare and a fraud. If there is an obligation to maintain it, by every fair construction it creates a general liability. Will even Mr. Spencer say that a pledge by an individual of an income to repay an advance, with a disclaimer of further liability, but with a covenant positive and unconditional to make that income adequate, would not, on failure to fulfil such covenant, give a right of action? The parts of the agreement might not be very consistent; and questions might arise which should prevail.

But as to the moral obligation to repay the money, especially if the reduction of the income was subsequently made from considerations of policy and interest, could a doubt remain? The State cannot be compelled to pay; it can assume no obligation but that of honor and morality. And if this provision is to be considered as the inducement to the advance, and public expediency or necessity should hereafter require a reduction of the canal tolls, and this revenue should prove insufficient, what reputable man would say that the State was not bound by as high an obligation as it could assume, to refund the moneys applied, under this agreement, to its benefit? If there is the constitutional power to make this contract, whether the revenue pledged be sufficient or not, the money must be repaid. It is a debt; to refuse to pay it by such resources as the State shall possess, is repudiation.

Conclusion.

My letter has already extended so far beyond my intentions that I cannot discuss, as I desire, the questions of expediency, administrative policy, and public morality involved; I can scarcely allude to them.

This anticipation of the surplus revenues is without the pretence of necessity. The canal, well administered, is more than amply adequate to do all its business. If we have not now the enlarged locks and other improvements contemplated by the committee and the Convention, and are not actually using

the boat of one hundred and twenty tons instead of eighty, it is simply because those who have expended the four millions which have been applied to the completion of the public works since the new Constitution, and which were far more than adequate to these purposes, have chosen to expend it in the improvident and inefficient manner which characterized the disastrous policy of 1841. How far a reduction of freight would result from this new expenditure of nine millions, beyond what would be effected by the use of the boat of one hundred and twenty tons, is conjecture. No sufficiently trustworthy estimates or evidences have been adduced, nor have we any reason to hope, from former experience or from the mode in which the four millions have been recently expended, that there would be much wisdom in the application of the proposed loan. We have, therefore, no inducements to re-enter upon the debtor system that proved so ruinous before. It is dangerous to part, as the Bill does, with our discretion in the regulation of the tolls, — a discretion which the Convention dared not to tamper with, — and more so to establish a fixed rule, as the Bill also does, which, if it have any effect, must introduce fluctuations vexatious to the transporters and hazardous to the revenues. It is of very doubtful morality for the State to obtain money on mortgages for which it disavows its general liability, inducing the lender to take the securities under the promise afterward to invest in them moneys which it holds as trustee.

There are other not less grave objections to this Bill. It would be a calamity to the State and to the country to break down the barriers with which our new Constitution has surrounded the credit of the State, to reverse the example which we have set, and, returning to a career of individual oppression and social dishonor, inflict the inevitable consequences, not only upon ourselves, but also upon other States and our posterity. It is pleasant to borrow. It is easy to spend. It is hard to pay. Stringent as the present Constitution was said to be in providing for our debt, we have reduced its amount, in four years of prosperity, but four hundred thousand dollars!

In the first moment of expansion and of speculative feeling we propose to increase that debt nine millions! Constitutional obligations formed after years of controversy and in the bitter experience of errors, against the repetition of which they were intended to secure us, agreed to by a vast majority of all parties in the Convention assembled to enact them, and adopted by the vote of nearly the whole people, have not the slightest power to restrain us. The consequences I cannot now trace. If folly and madness are to guide our councils, I do not care to study the future they will form for us. I do not believe that it is inevitable. I look confidently to our true-hearted friends in the Senate. I rely upon the people,—their wisdom, honor, and morality.

Very truly your friend,

S. J. TILDEN.

WILLIAM CASSIDY, ESQ.

XVI.

In the fall of 1855 Mr. Tilden was the candidate of that portion of the Democratic party of New York known then as "Soft Shells," for the office of attorney-general. The success of the Temperance, or Prohibition, party in electing their candidate for Governor in 1855 had given them courage and confidence. They would have been pleased to support Mr. Tilden if he had been willing to countenance their intemperate methods of promoting temperance. During the canvass a letter was addressed to each of the candidates, requesting his views of the "prohibitory" legislation of the preceding session. Mr. Tilden's views were embodied in the following letter.

The Prohibitory Act was afterward declared by the highest Court of the State to be unconstitutional and void.

COERCIVE TEMPERANCE.

NEW YORK, Oct. 3, 1855.

GENTLEMEN, — Your letter asking my opinion as to the law recently enacted in this State, entitled "An Act for the Prevention of Intemperance, Pauperism, and Crime," has been received.

The question relates to the functions of the office for which I have been nominated, and may reasonably, and does, in fact, largely occupy the attention of the electors. Under the circumstances I have no hesitation in stating to you opinions which have been expressed to so many persons and for so long a period as to protect me from the suspicion of shaping them to the present exigency, and which accord entirely with the rules for construing our State and Federative Constitutions, the principles of political economy, and the convictions as to the proper sphere of government by which my political action has been hitherto invariably guided.

The design of the law to which you refer is to stop the use of all distilled spirits, wines, ales, and beers, except for manufacturing, medicinal, and sacramental purposes, by disabling all individuals from obtaining these articles unless from certain *quasi* public officers invested with legal power to judge, in their own absolute discretion, as to the probable nature of the use intended by the purchaser. It is not strange that the authors of an Act which aims at controlling the tastes and habits of three and a half millions of people in a matter which each individual must regard as peculiarly, if not exclusively, personal to himself, — which aims at working, by a legislative fiat,

an instantaneous revolution in the traditional customs of large classes, in a particular in respect to which all men are apt to be most tenacious, — should deem it necessary to invoke the aid of a novel and extraordinary legal machinery. Intent on such an object, they naturally saw what it required rather than what the Constitution allows. They devised and incorporated into this law a special criminal procedure, on which they obviously relied for the enforcement of its prohibitions and penalties. That procedure is wanting in the characteristic features and essential elements of the common-law procedure applicable to such cases, as it has been immemorially practised in this State, and as it has been defined, expounded, and upheld by an unbroken series of our judicial decisions, as well as by the courts of our sister States, of the Federal Government, and of that country from which the common law itself was derived.

Nor does the Act stop here. Reversing a fundamental rule of evidence which is founded in reason and natural equity, and has been for ages the shield of individual rights and personal safety, it presumes guilt instead of innocence. It declares a delivery to be presumptive evidence of a sale, and the sale to be sufficient proof of an unlawful intent. Conceding certain uses to be so proper and necessary that the sale cannot be wholly forbidden, it makes the seller an inquisitor into the secret purpose of the buyer. It then distrusts its own agent, and assumes to deal with the intent with which he does an act authorized by it as lawful; and shrinking from itself attempting to prove the true nature of that intent, it pronounces him guilty unless he acquit himself by proof of an equally difficult character.

It is but fair to add that the Act applies the same code to every citizen who delivers a bottle of wine or a glass of ale for the most useful or humane purpose. One of its provisions passes sentence of outlawry upon certain property, and abrogates all remedies for its recovery, even as against a thief or robber, unless upon the impracticable condition that the true owner

shall first prove affirmatively the absence from his own mind of the intent to sell; another totally perverts an ancient and well-settled legal definition in order to attach the incidents of a nuisance to property under circumstances that bear no analogy to that character; and in many respects the Act works sweeping legislative confiscations of private property.

It is, in my judgment, against precisely such legislation as this that our State Constitution intends to protect every citizen when it declares that no person shall "be deprived of life, liberty, or property without due process of law." These latter words are an early legal paraphrase of the words "law of the land" in Magna Charta, which are also adopted from it into another provision of our State Constitution. The restraints they create were originally imposed on the executive power. Our Anglo-Saxon ancestors, jealous in behalf of the common law, often invoked their protection, not merely against the arbitrary acts of the sovereign, but against his attempt to introduce novel processes similar to that adopted in this Act, and borrowed from the same source. Brought to this country with other sacred traditions of ancient freedom, they were inserted in our American written constitutions as restraints on the legislative power in favor of individual rights. In this State the language of the restriction has received a well-settled judicial interpretation. It has been held to restrain the Legislature from itself usurping judicial power over life, liberty, or property, and for creating any new process for the forfeiture of these great rights which should substantially depart from the customary procedure of the common law. This established construction must have been familiar to the able and learned lawyers who shared in the discussion of this part of the Constitution in the Convention of 1846. In the exact words which had received such a construction the clause was adopted by that body, and was ratified as the deliberate and permanent will of the people expressed in the fundamental law of the State. In the same sense it is now binding on their legislative agents and on the judicial tribunals. I am of

opinion, therefore, that the Prohibitory Act — in the provisions which form its distinguishing characteristics, are interwoven with its whole structure, and supply the means on which it relies to effect its purpose — is unconstitutional and void.

Such legislation springs from a misconception of the proper sphere of government. It is no part of the duty of the State to coerce the individual man except so far as his conduct may affect others, not remotely and consequentially, but by violating rights which legislation can recognize and undertake to protect. The opposite principle leaves no room for individual reason and conscience, trusts nothing to self-culture, and substitutes the wisdom of the Senate and Assembly for the plan of moral government ordained by Providence. The whole progress of society consists in learning how to attain, by the independent action or voluntary association of individuals, those objects which are at first attempted only through the agency of government, and in lessening the sphere of legislation and enlarging that of the individual reason and conscience. Our American institutions have recognized this idea more completely than it has yet been recognized by the institutions of any other people, and the Democratic party has generally been the faithful guardian of its progressive development. In most of the great practical questions of our time it has opposed the interference of Government even for the best objects; and because it was solicitous for those objects, has preferred to trust them to wiser, safer, and more efficient agencies. Devoted to the rights of our American industry, which is now beginning to fill the world with the renown of its achievements, it has refused to direct its application by prohibitory or protective tariffs, preferring that each man should judge how he can make his own labor most productive, and trusting for the aggregate result to those natural laws which enable every one of our million of city population daily to choose his food, and yet furnish buyers for everything that has been provided beforehand. Claiming a good currency for the people, and well-regulated exchanges, it has discarded a

national bank, and seeks to put these great interests under the guardianship of the laws of trade. Friendly to the modern machinery of travel and transport, — which, by cheapening the interchange of products of different soils and climates, has, in effect, added fertility to the one and geniality to the other, — it has opposed internal improvements by the General Government, and prohibited loans of State credit and money in aid of railroads. Asserting the freedom of voluntary association, it has refused special charters, and established general laws of incorporation. On all these questions, — which have largely occupied the public attention for a generation, — because the Democratic party has favored the ends, it has rejected the means by which large parties and many good men have erroneously sought to promote them. To-day, while it is in favor of sobriety and good morals, it disowns a system of coercive legislation which cannot produce them, but must create many serious evils, which violates constitutional guaranties and sound principles of legislation, invades the rightful domain of the individual judgment and conscience, and takes a step backward toward that barbarian age when the wages of labor, the prices of commodities, a man's food and clothing, were dictated to him by a government calling itself paternal. I need not add that in this conclusion, as well as in the general course of the Democratic party on these former occasions, I entirely concur.

With great respect, gentlemen, I remain yours, etc.,

SAMUEL. J. TILDEN.

TO THE HONORABLE JOHN TAYLOR AND ANDREW KIRK, ESQ.

XVII.

THE nomination of Mr. Lincoln for the Presidency in 1860, with a fair prospect of his election, filled Mr. Tilden's mind with the gravest apprehension. He felt an absolute conviction that Mr. Lincoln could not receive an electoral vote from a single Slave State. His prophetic eye discerned already what subsequent events made too evident to all, — that a condition of politics in which the Federal Government should be carried on by a party having no affiliations in the Slave States would constitute a government out of all relations with those States; that "it would be in substance the government of one people by another people;" and that from the natural operation of inflexible laws it must result in efforts at separation, and lead to all the imaginable and unimaginable disasters to be apprehended from such efforts.

So monstrous did these consequences appear in his eyes that he thought it better to bear the ills we had than fly to those we knew not of, — better to elect either of the opposing candidates,[1] who had supporters in every State, than any candidate with no supporters in a region as large as France, Italy, the Austrian Empire, the German States, and the British Isles. The grounds for these apprehensions, in case of Mr. Lincoln's election, Mr. Tilden set forth at some length in the following letter, addressed to the Honorable William Kent a few weeks before the election in 1860. Judge Kent had no pronounced partisan sympathies in politics. He inherited a reverence for the Federal doctrines of his father and of his father's friend, Alexander Hamilton, and therefore usually voted with the Whigs while

[1] The opposing candidates were John C. Breckenridge, of Kentucky, John Bell, of Tennessee, and Stephen A. Douglas, of Illinois.

they maintained a party organization. He was an accomplished jurist, and enjoyed in a remarkable degree the esteem of those who had the good fortune to be received within the somewhat restricted circle of his acquaintance. He died in 1861.

The extraordinary foresight shown in this letter was founded upon a careful estimate of the situation of the parties respectively drifting into armed conflict, and upon a comparison of the means of averting it possessed by Mr. Lincoln with those possessed by General Jackson in 1833 and by General Taylor in 1850. Mr. Tilden had no exclusive or special information; his opposition to the claim set up by the slaveholders that they had a constitutional right to take slaves into all the territories, and his opposition to the repeal of the Missouri Compromise, had broken all his relations at the South and made him an object of proscription there.

The warnings of the letter were received with almost universal incredulity, and were even replied to in some instances by the imputation that the writer's judgment had lost its balance. But when his predictions began to be verified, the leading business men in New York of both parties held numerous conferences, to which Mr. Tilden was always invited, and where he sometimes spoke; but the only outcome of these conferences was a monster petition to Congress to compromise the controversy.

Mr. Tilden was of opinion that if Mr. Buchanan and Mr. Lincoln could be brought to act in concert upon a policy like that of Jackson, — of mingled firmness and conciliation, — and if the public opinion of the South were appealed to by measures adequate and timely, it was still possible that a Union party might be formed in the moderate Southern States. So long as actual collision could be avoided, Mr. Tilden thought that acts and words of provocation were to be deprecated. Time, he believed, had resources in reserve which had not yet been exhausted. But when at length the shock of arms came, Mr. Tilden never doubted what was his own and every other patriot's duty. To use his own language, "When an attempt was made to break up the Union and to dismember the territorial integrity of the country, the people were compelled to make a manly choice between these calamities and the dangerous influence of civil war upon the character of the gov-

ernment. They patriotically and wisely resolved to save the Union first, and to repair the damages which our political system might sustain, when the more imminent danger had been provided against."

But a different, and, as Mr. Tilden apprehended, an inadequate, conception of the dimensions of the impending struggle prevailed in the mind of Mr. Seward, who filled the willing ear of the public with assurances that the contest would be over in "ninety days;" and he also more or less infected the judgment of Mr. Lincoln with this delusion.[1] When the first call for seventy-five thousand volunteers was made, Mr. Tilden advocated a levy of five hundred thousand at least, one half to be placed in camps of instruction, and the others to be assigned to such service as undisciplined troops are capable of rendering.

When consulted by Mr. Secretary Stanton as to the best method of conducting the war, Mr. Tilden said: "You cannot count upon finding generals of great military genius, such as the whole human race produces but once in several centuries; you must make available the superiority of the North in population, and its vastly greater superiority in material resources. You must concentrate your strength upon the turning-points of the contest, and organize a movable reserve capable of being

[1] [It is but justice here to say, in behalf of Mr. Seward, that his hopeful assurances were generally accepted by the people of the North; and less upon the Secretary's personal authority than because of what seemed the intrinsic probability of their being well founded. Both Mr. Seward and the people were in ignorance of one most important factor in the case, upon which, however, the Confederates were already confidently relying, — the extent to which foreign sympathy and capital had already been enlisted on the side of the insurgent States. Our diplomatic agents in Europe were, I believe, without an exception, at the beginning of the war in sympathy with the South, and they had been largely and effectively reinforced by special agents, through whom the official circles of Europe were impressed with the conviction that the war must result in disunion, and that Europe could not afford to occupy an unfriendly attitude toward the Cotton States. The extent to which the European mind had been impregnated by these delusions was not suspected by Mr. Seward, nor by the Northern public. He never dreamed when he was prophesying a ninety-day war that Europe was the real financial base of the insurrection. The South, on the contrary, did know it, and was depending upon that resource from the beginning. The leaders of the South had never counted upon success without foreign aid, and but for their assurances of such aid it would be doing great injustice to their intelligence to suppose they would have attempted to divide the Union by force. Had the war been confined strictly to our own soil, who shall say that Mr. Seward's assurances might not have been confirmed by the result? — ED.]

suddenly thrown upon decisive points." A year and a half later, during which an opposite system had been acted upon, Mr. Tilden again saw Mr. Stanton, who, alluding to their former conversations, said, "I beg you to remember, my dear sir, that I perfectly agreed with you."

The financial policy adopted by Mr. Chase seemed to Mr. Tilden to be equally erroneous. His objections are thus briefly stated in his First Annual Message:[1] "The Federal Government — unwisely distrusting the intelligence and patriotism of the people — shrank from exercising its borrowing power, supplemented by its taxing power, and instead of resorting at once to the whole capital of the country capable of being loaned, — which forms a vast fund, perhaps thirty or forty times as large as the then existing currency, — it chose to begin by debasing that comparatively insignificant part of circulating credits, creating fictitious prices for commodities and services for which it was next to exchange its bonds, in an expenditure ten times as large as the whole amount of the 'legal tenders' it ventured to put afloat." The consequences were that the currency was depreciated, — touching at its lowest point thirty-five cents on the dollar, — the cost of the war was more than doubled, as he believed, and the country was brought to the verge of bankruptcy.

While dissenting from the Administration on these and other questions, Mr. Tilden contended that the constitutional Opposition should uphold all measures of the Administration conducive to the re-establishment of the Union. He urged that in time of war we could not deal with our government, although disapproving its policy, without more reserve than was necessary in debating an administrative question during a period of peace; as, if we should paralyze the arm of Government, we could not stay the arm of the public enemy, striking at us through it. On several occasions he prepared declarations in support of the war which were authoritatively adopted by the Democratic party of the State of New York. Mr. Lincoln, whose relations with Mr. Tilden antedated the war, gave him a respectful and cordial confidence; and upon one important occasion Mr. Lincoln followed his advice, supported by that

[1] Vol. II. p. 55.

of Ex-Governor Morgan, against the clamors of many of his partisans.

In 1876 two out of the three surviving members of Mr. Lincoln's Cabinet and the confidential friend and assistant of Mr. Stanton were active supporters of Mr. Tilden for the Presidency.

THE UNION, — ITS DANGERS; AND HOW THEY CAN BE AVERTED.[1]

To the Honorable William Kent.

DEAR SIR, — Among my early memories of public affairs, during the tariff and nullification controversies, I recollect the illustrious name of your father, James Kent, signed to a call for a meeting of the citizens of New York to recommend to Congress the adoption of measures of conciliation toward our brethren of the South. The association recurs to my mind as often as I think of your name on the Union electoral ticket, which I consider a most wise and necessary endeavor to rescue our country in a far more perilous political conjuncture. I had no agency in putting it there, but I know it represents no partisan interest, prejudice, or passion, no man's vanity or ambition, and still less any illiberal opinion or feeling toward natives of foreign lands who have chosen this country for their home. It represents nothing less worthy or less noble than patriotic devotion to the country, and serious and well-considered solicitude for the welfare of the hitherto fortunate people of these, as yet United States. I share the sentiments which animate you in the present crisis. I recall your desire, when last we met, that I should express to our citizens the convictions often avowed to you. An occasion has arisen which commits me to do so. I have chosen the form of a letter; I dedicate that letter to you. It is a testimony of my respect and affection, and that we think the same things concerning our country. Your interest in the great theme will compensate all deficiencies in the offering.

[1] From the New York Evening Post, Oct. 30, 1860.

The use of parties.

The tendency of parties is to draw the various political elements into two divisions and to equalize those divisions. The minority adopts enough of the ideas of the majority to attract those who are nearest to the line of division; and the majority, in struggling to retain them, makes concessions. The issue is thus constantly shifting "with the wavering tide of battle," until the policy which at last prevails has become adjusted so as nearly to represent the average sense of the whole people. It is rare in our political experience that the difference between the majority and the minority equals 5 per cent of the whole number; extremely rare except in cases where the issue on which the parties form is made up to suit specially some locality. In shaping the policy which emerges from the conflict, the minority acts a part scarcely less important than the majority; and the dissentients are thus prepared to accept the result.

Such is the process by which the will of all the parts of the community is collected, averaged, and represented in the policy finally agreed upon; this is the method of self-government.

Why self-government is best.

The reason why self-government is better than government by any one man, or by a foreign people, is that the policy evolved by this process is generally better adapted to the actual condition of the society on which it is to operate. Government by one man often fails to understand, but it usually defers. Government by a foreign people neither understands nor defers; it has no adaptation to the wants or temper of the governed. It is, therefore, about the worst government that can be imagined.

The federative system of local self-government.

Our fathers understood this truth. They had tried the experiment. They had been driven to revolution by George III. — said to be the "most honest man in his own dominions" — and by the genial Lord North, and had seen how cordially the British people sustained whatever was worst in all the policy of monarch and minister. They foresaw that a single government, exercising all the powers of society over the people destined to occupy so vast a region

as the United States, and embracing the elements of such diversities of interest, industry, opinion, habits, and manners, would be intolerable to bear and impossible to continue. They therefore largely adopted the federative idea in the mixed system which they established; and vesting only the powers appertaining to our foreign relations and to certain specified common objects of a domestic nature in a federative agency, they left the great residuary mass of governmental functions to the several States.

Anomalous character of the Republican party.

In the practical working of this beautiful but complex system, the Republican party is a phenomenon new and startling. It is the first instance in which any partisan organization has been able to compete, with any prospect of success, for ascendency in our federative government without being national in its structure, without being composed of majorities — or of minorities able to compete effectively with majorities — in all the States of both great sections of the Union. The Republican party has no practical existence in any of the fifteen Southern States. In a few points, where the five border States touch the North, it has a nominal existence, but without any appreciable power over the opinion or action of those States. In the ten other States it has no affiliations whatever.

Its sectional character inherent.

This condition of things is not an accident. It is the result of five years of earnest discussion before the Southern people of the character and objects of the Republican party. It is produced against the strongest motives which influence the formation of party connections. Ties of ancient association between most of its members and the dissevered minorities of the South; fragments of the old Whig party, anxious to beat their local rivals, and impelled toward alliances by the instinct of self-preservation; common opposition to an existing Administration; the prospect of common success and of sharing in a political ascendency, — all these potential causes united have utterly failed to draw to it any considerable number of adherents in all the South, against the

pervading, immense, overwhelming public opinion of all those States.

I speak not now of causes, I simply state the fact. Our Republican friends will say that their policy is misunderstood by the Southern people. There is undoubtedly a serious misunderstanding between the Republican party and the whole Southern people. In what does this misunderstanding consist? It is easier for the Republican party to mistake as to the effects of its policy on the interests of the South than for the whole Southern people to mistake the real nature of that policy.

I am apt to pay some respect to the unanimous opinion of great commonwealths on a question peculiarly affecting themselves.

Republican ascendency is practically foreign government.

If such an organization as the Republican party should acquire complete possession of the federative government, what sort of a system would it be? To the people of the fifteen States it would be a foreign government. It would be erected over them through the forms of their Constitution, but that would not affect its practical character. None of their citizens would have concurred in bringing the Administration into existence; none of their public opinion would be represented in that Administration.

Perilous subject of the controversy.

Now what is the question between the eighteen Northern States and the fifteen Southern States of the confederacy, out of which arises a state of things so novel and so extraordinary?

It is a controversy — how far of mere opinion, and how far operating practically, I will presently discuss — it is a controversy which touches the relations of two races, being eight and a half millions of whites and four millions of blacks, composing all the population of these fifteen States, — relations which constitute a whole system of industry, furnishing their staple exports and their exchanges with us and with all the world; relations which thus involve a vast interest in property — not less than three thousand millions of dollars — permeating these fifteen States; relations which are the basis of the habits of

families and of society in all these commonwealths and of their social order, a shock to which is associated in the mind of the dominant race with a pervading sense of danger to the life of every human being and to the honor of every woman.

This nature of the subject-matter, out of which the controversy arises, explains and accounts for a state of parties so anomalous. Such a disorder in the voluntary machinery by which popular government is carried on, is in itself serious; but it is more important as a symptom of a malady in the body politic, deeply seated and far more dangerous.

Sectionalism of parties has hitherto never gone beyond a little predominance of a party in the States of one section and a little predominance of the other party in the States of another section. In that mild form its tendency alarmed the heroic mind of Washington, and drew from him an impressive warning in his Farewell Address. Sectionalism is now threatening to become absolute in the predominance of a party in eighteen States which has no practical existence in fifteen States.

Sectionalism of parties.

Sectionalism of parties has hitherto been founded in differences upon subjects comparatively unimportant. It touched nothing deeper than the details of a tariff, when it called out all the patriotic courage and energy of Jackson to avert its dangers. Sectionalism is now founded upon differences of opinion reaching to the very structure of civil society in fifteen States.

With the prudent and conservative Monroe mediating at the head of the Government, and with Clay in the House of Representatives exerting for pacification all his matchless power over assemblies, sectionalism, not of popular parties, but in Congress, on a question like the present, though in the mitigated form of the Missouri controversy, woke Jefferson, as he expressed it, "like a fire-bell at night," from the repose of his retirement, and made him for the first time almost despair of the Republic. Sectionalism on a question of the same nature is now worn into the minds of the people by five years of organized agitation. It has become the sole basis of existing

party divisions, and threatens to seize all the powers of the Government.

Each of the elements of evil which, of a feebler type, and in an incipient state, filled these heroes and statesmen of our Revolutionary and Constitutional era with apprehension, is now grown to a magnitude which they could never have conceived; and these elements, thus grown, are conjoined into one monstrous malady. And yet every shallow sophist who can pen a line for the skimming eye of thoughtless readers, wiser than Washington, braver than Jackson, more skilled in our complex government than Jefferson, scoffs at the danger, and scoffs at all who see it as insincere or timid!

Education of the people for disunion.

A sectional division, upon a sectional issue, of the great parties which organize and represent the conflicting opinions of society, and which compete for the control of the machinery of government in a system of confederated States, rapidly and effectually educates the people for disunion.

It is not the ordinary case of party excitements between citizens united in the same community. There, misapprehensions are removed and animosities assuaged by mutual contact; adversaries mingle in the transactions of business and in the intercourse of society, meet at the same church in a common worship and on a thousand occasions of familiar and friendly association; they are brought together and kept together by common friends; they are interlaced with each other by the numberless ties which spring up and grow around and grow over individuals living in one community. They cannot move their houses, shops, or farms; they cannot tear asunder the social ligaments which bind them together.

Now imagine parties such as we have often known them, in their mutual misapprehensions and mutual injustice and their passionate animosities, — one party dominating in eighteen States on one side of a geographical line, and the other, composing the whole people of fifteen States, on the other side of that line. They know each other only through their excited

imaginations. The antipathies of each are directed against a distant people. Each is organized into States, with complete governments holding the purse and wielding the sword. They are held together only by a compact of confederation.

Federative system increases such dangers.

Will their mutual animosities be equally safe, equally harmless as the party controversies of individuals united in one community? The strain, the shock of the collision between these organized masses must be vastly greater. The single slender conventional tie which holds States in confederation has no strength compared with the compacted, intertwining fibres which bind the atoms of human society into one formation of natural growth.

The masters in political science who constructed our system preserved the State governments as bulwarks of the freedom of individuals and localities against oppression from centralized power. They recognized no right of constitutional secession, but they left revolution organized whenever it should be demanded by the public opinion of a State, — left it with power to snap the tie of confederation as a nation might break a treaty, and to repel coercion as a nation might repel invasion. They caused us to depend, in a great measure, upon the public opinion of the States in order to maintain a confederated Union. They intended to make it necessary for us, in reasonable degree, to respect that public opinion.

How long could an organized popular agitation in England against France, or in France against England, continue without actual hostilities, especially if embracing the respective governments and a majority of the people? Wars have as often been produced by popular passions as by the policy of rulers; but I venture to say that in the causes of all such wars, during a century past, there has not been so much material for offence as could be found every year in the fulminations of a party swaying the governments of many Northern States against the entire social and industrial systems of fifteen of our sister States, — so much to repel the opinion, to alienate the sentiments, and to wound the pride.

Moderate Republicans.

It would be doing injustice to multitudes of patriotic citizens who belong to the Republican party to impute to them extreme opinions, or intentions consciously hostile to the peace and safety of the Southern States. Antagonism to the Democratic party, habitual with many who were Whigs; misapprehensions and excitement growing out of the repeal of the Missouri Compromise and the Kansas controversy; opposition to various incidents in the policy of the existing Democratic Administration; the desire for change and for new combinations which arises under a continuous ascendency of any party in our country, — all these motives of political action have arrayed in the Republican ranks many men of moderate opinions who, if they saw the real nature and inevitable results of a sectional party organization, would recoil from them in just and patriotic alarm.

False position of their party.

It is not the purposes of such men, but the practical attitude of their party, which constitutes the evil. That party is in a false position. Without the counterpoise which would be the effect of its affiliation with the opposition element in the Southern States, freed from any such necessity for moderation, competing for popular favor in the North alone, and therefore addressing itself exclusively to Northern opinions, prejudices, and passions, it has been steadily drifting into a more vehement, a less discriminating, and a blinder antagonism to the South, and yielding to the dominion of extreme ideas and of the more violent elements which it contains. Without anything to represent it in the Southern States, it has no means to resist the inevitable tendency there to impute to it purposes even beyond those which it really entertains, and no means of inspiring confidence, allaying apprehension, or conciliating opinion among the masses in the localities of the South.

The necessary consequences.

It is thus that the divergence between these majorities of the North on the one side, and of the whole people of the South on the other, has been for years increasing. Extremes on the one side provoke extremes on

the other. Alienation, mutual distrust, misapprehension of each other's motives and objects, animosities, and above all and worse than all, convictions and principles which induce each to dictate impracticable conditions of reconciliation, are settling deeper and deeper into the masses under the influence of systematic sectional agitation.

It would be strange if this immense and powerful popular machinery, swaying the State governments of both sections, which has been employed for five years in dividing the country geographically, had not cloven down between the masses of the people in the two sections a chasm deeper and wider and more difficult to close up than ever existed before.

Chronic sectionalism is inevitable disunion.

If such a division of parties, founded upon suhc antagonism of opinions, habits, and interests, involving the systems of industry and of society existing at the North and in the South, becomes chronic, its natural and inevitable result must be disunion. The cord of fraternal sentiment and common opinion which holds the sections together cannot, by any possibility, endure the gradual, steady wear of these unceasing conflicts, and the ever-augmenting violence of the shock of repeated collisions between the popular masses which the two sections embody.

This is to me no new opinion. I communicated it in writing in 1855 to a gentleman now eminent in the Republican party,[1] before he engaged in its formation; and expressed the conviction that the evil would have reached a dangerous, if not fatal point of culmination, when a purely Northern party should have found itself able to elect a President on a pitched battle with the Southern States over questions and ideas which thrill to the very life-centres of Southern society.

Summary of the discussion thus far.

I have now considered the anomalous nature of the Republican party as an organization; I have shown how, as it assumes the powers of our federative system, it subverts the essential character of that system, and erects in practice a foreign government over fifteen States.

[1 Preston King, United States Senator from New York. — Ed.]

I have pointed out how, in the meantime, such a division of parties is educating the people for disunion, in what manner it ripens its fatal fruits, and to what maturity they have already approached. I have indicated the subject of the controversy between the Northern majorities and the Southern people, out of which this condition of things arises; demonstrated how near it is to the very structure of civil, social, and industrial life in all the South; and inferred that it is only such a subject of controversy that could create such a state of parties; and conversely, that such a state of parties, on such a subject, is a concentrated evil and an accumulated danger. I have invoked the maxims deduced from the experience of all mankind and our own accepted theories of self-government to justify me in stating the immense presumption that the Southern people understand the effects upon themselves of the Republican organization and policy better than the Republicans do; that, at all events, the nearly unanimous judgment of fifteen great communities ought to be respected; and that their judgment as to the establishment over them of any affirmative measures exclusively affecting themselves ought to be conclusive.

It remains to analyze the avowed proposition of the Republican party to the people of the South.

Are the Southern people to be convinced, or is the Republican party to recede from its principles, its policy, and its organization? In what manner is a reconciliation to be effected, and upon what terms? What ought to be the basis of a reconciliation? Will the Republican party make it voluntarily, or must the people of the North cast off the Republican party as an element of disease and discord, and thus restore harmony and health to our federative system?

If the Republican party intrenches itself in the Presidency, will the constitution of our body politic await the tardy remedy, or will it perish in the process toward restoration?

These are grave questions; let us proceed to consider them.

What is the character of the Republican party? What are its aims? What is to be its practical policy in case it gains possession of the government? Character, aims, and policy of the Republican party.

1. It is an organized agitation on the general question of slavery, mainly irrespective of the practical application of its conclusions to any proposed measure of legislation or administration by the Federal Government. Organized agitation against slavery. It is not easy to define the exact limit where the liberty of philosophical speculation or abstract discussion ends, and where an offence against good neighborhood — whether of individuals, families, or States — begins. But it is very clear that the Republican party has passed that boundary; for an organized agitation by a majority of one community, including its government, against the social or industrial system of a neighboring and friendly community, is an offence which leads to alienation and hostility, if not to actual war. Even if we assume that the exclusion of slavery from the Territories is within the legitimate sphere of the Federal Government, it cannot be pretended that the general character of the discussion kept up by the Republican party is subordinate to that end. Indeed, the Territorial aspect of the controversy has almost entirely disappeared. Instead of inquiring how far it is the right and the duty of the Northern States, through the Federal Government, to give effect on the Territorial question to the general ideas they might be assumed to entertain, the orators and journals which represent the Republican party are almost exclusively occupied in exciting the hostility of the people against slavery as a system, irrespective of the Territories; and often the intention is avowed to act by indirect means upon slavery within the States.

Among those means is a gigantic system of "moral suasion," as Mr. Seward calls it in one of his recent speeches, — moral coercion, in fact, — by which among the people of the Southern States it shall propagate its ideas against their present social and industrial systems, through permanent party organizations dominating in the Northern States, swaying the Northern Governments, and "Moral suasion" through our federative government.

finally through the federative government of all the States. Mr. Seward does not say whether the postmasters and other officers of the federative government are to be made little centres of anti-slavery opinion, but he seems to think that all the usual methods by which parties act may be properly applied to the end. Now the States are as sovereign, with respect to slavery within their own borders, as any foreign nation. If we were by "moral suasion" to attempt to apply our ideas in respect to the only rightful form of government, or in respect to the freedom of the Press, to the French people, through our minister at Paris, he would be dismissed; and if found to be acting under our instructions, we should become objects of just hostilities on the part of the French Government. A similar experiment in the Southern States would probably result in the expulsion of the federal officials, if not in a civil war. According to the principles of public law and in all moral aspects, such interference in the internal affairs of a State would be more inexcusable when she were united with us in a confederation, than if she were in all respects a foreign nation. And the difficulty of the case is, that even if the endeavor were fairly made to confine the agitation to the Territorial question, it would be impossible so to confine it in practice, on the basis of opinion which characterizes the Republican party and gives it all its vitality.

False rule of legislation and administration by the Federal Government.

2. The rule of moral right and duty which, I think, may be fairly said to be generally adopted by the Republican party is stated by Mr. Seward in his speech at Lansing. "I will favor as long as I can," said he, "within the limits of constitutional action, the decrease and diminution of African slavery in all the States."

Theory of this rule.

The theory is that slavery is a wrong, without reference to any condition of time, place, or circumstances; that the limit of our moral responsibility for the wrong is fixed exactly according to our legal and constitutional power to remove it; that it is, therefore, not only our right, but our duty, to exert whatever legal or constitutional power we possess for its removal.

This theory runs through all Mr. Seward's speeches; and is, I think, the master-key to the whole argument by which the Republican leaders address the popular mind.

The practical application and necessary consequences of this theory can be gleaned from the speeches of Mr. Seward.

Its practical operation.

In his recent speech at Dubuque he states what it is not proposed to do, in this guarded manner: "We do not vote against slavery in Virginia. We do not authorize Abraham Lincoln or the Congress of the United States to pass any laws about slavery in Virginia." Observe how carefully his language is framed not to disclaim any of the forms of indirect action upon slavery within the States.

Indirect action on slavery within the States.

In his Rochester speech he thus indicates the constitutional mode of abolishing slavery within the States:

Changing the Constitution by excluding one and admitting the other class of States.

"It is true that they [the fathers] necessarily and wisely modified this policy of freedom, by leaving it to the several States, affected as they were by different circumstances, to abolish slavery in their own way and at their own pleasure, instead of confiding that duty to Congress.

. . . . . .

"But the very nature of these modifications fortifies my position that the fathers knew that the two systems could not endure within the Union, and expected that within a short period slavery would disappear forever. Moreover, in order that these modifications might not altogether defeat their grand design of a republic maintaining universal equality, they provided that two thirds of the States might amend the Constitution.

"It remains to say on this point only one word, to guard against misapprehension. If these States are again to become universally slaveholding, I do not pretend to say with what violations of the Constitution that end shall be accomplished. On the other hand, while I do confidently believe and hope that my country will yet become a land of universal freedom, I do not expect that it will be made so otherwise than through the

action of the several States co-operating with the Federal Government, and all acting in strict conformity with their respective Constitutions."

The mode provided by the Constitution for its own amendment is not accurately stated by Mr. Seward in the above extract; but the plan of applying it so as to abolish slavery within the States is sufficiently disclosed. In a recent speech he proposes absolutely to exclude from admission into the Union all new States having slaves, and to apply our Northern system to all new States; evidently looking to the multiplication of the free States until their number shall enable them to alter the Constitution, and "the grand design of a republic maintaining universal equality" shall be consummated, without the consent and in defiance of the will of the Southern States.

Re-organizing the Supreme Court.

In a speech in the Senate he proposed to re-organize the Supreme Court of the United States, for the purpose of reversing the decision upon the relative rights of the States and their citizens on the question of slavery. At Lansing he declared that it was his "duty as a patriot" to go for having "no army and navy" of the Union,

Disbanding the army and navy.

because their "whole object" was "that slaves may not escape from the Slave States into the free; and that freed or emancipated negroes in the Free States may not enter and introduce civil war into the Slave States; and because that, if we provoke a foreign enemy, the southern frontier is exposed to invasion from England, France, and Spain." The Constitution not only contains an express covenant for the protection of each of the States against "domestic violence" and foreign "invasion," but also in its preamble declares that to "insure domestic tranquillity" and to "provide for the common defence" were among the very objects for which it was instituted. And yet Mr. Seward avows the startling doctrine that for the very reason that the army and navy are used to carry out these objects in respect to the Southern States, they ought to be disbanded.

In his recent speech at Madison Mr. Seward declares that "it is by a simple rule that he has studied the Constitution;" which rule is that "no human being," "no race," should be "kept down in their efforts to rise to a higher state of liberty and happiness," but that if any such "would rise, I say to them, in God's name, good speed." The result he stated in a speech at an early day: "It [slavery] can and must be abolished, and you and I must do it."

Bidding revolution "good speed."

The practical result.

And in order to incite the Northern mind to a crusade against slavery in the States as well as in the Territories; to blind the eye of the North and still its conscience to the aggressive character of the movement against the social and industrial systems of our sister States, — violating alike the express compacts of the Constitution and the principles of public law which define the relations of independent sovereignties, — he adopts the fallacious theory, invented by Mr. Lincoln, of the "irrepressible conflict." He teaches, not as a doctrine of abstract philosophy, but as a practical necessity, that the Northern States cannot preserve their own social and industrial systems without overthrowing those of the Southern States; that "the rye-fields and wheat-fields of Massachusetts and New York must be surrendered by their farmers to slave culture and to the production of slaves, and Boston and New York become once more markets for trade in the bodies and souls of men," or "the cotton and rice fields of South Carolina and the sugar plantations of Louisiana" be "tilled by free labor." Having thus invested the crusade with all the sanctions of the sacred necessity of self-defence, he leads it forward, by the methods and means which I have exhibited, through artful evasions of the forms of the Constitution, to violate the substance of its obligations.

Object of teaching the doctrine of the "irrepressible conflict."

I certainly do not impute to every member of the Republican party such sentiments. On the contrary, there are large numbers of patriotic citizens attached to that party wholly incapable of adopting theories so wild, so

Prevalence of impracticable ideas.

[redacted]

fanatical, so revolutionary; and I admit that even the mass of those who assent to them do not see their true character, or the inevitable disasters of attempting to reduce them to practice.

But I cannot fail to see in the mind of every second man I meet among the Republicans the prevalence of ideas upon which it is impracticable to administer a confederated government. I lament it as a consequence of a division of parties, in which the Northern people know neither the subject of the controversy, nor its true bearing, nor their antagonists, except through their imaginations.

Mr. Seward's relation to the Republican party.

Mr. Seward represents in the Senate the greatest State of the Union, is of mature age and experience, and has more partisans and more practical power over the Republican mind and the Republican organization than any other one of its members; he is its representative man. He has recently traversed the Northern States, with social revolution dropping from his lips at every step, amid the acclamations of the masses of the Republican party. And yet men are found who ascribe to the prejudices of the South, or to misrepresentations of the aims of the Republican party, the complete alienation and repulsion of the unanimous public opinion of the Southern people which undeniably exists!

Origin of these false systems.

The origin of all this evil is in the rule of conduct to which I have adverted as generally adopted by the Republicans, and indeed to a considerable extent accepted by the Northern mind.

Rule for construing and executing the Constitution.

As a rule of right and duty for the construction and execution of the Constitution, the theory maintained by Mr. Seward, and too extensively accepted, is entirely fallacious. No contract governing complicated transactions or relations between men, and applying permanently through the changes inevitable in human affairs, can be effectual if either party intended to be bound by it is at liberty to construe or execute its provisions in a spirit of hostility to the substantial objects of these provisions. Especially is this true of a compact of confederation between the

States, where there can be no common arbiter invested with authorities and powers equally capable with those which courts possess between individuals for determining and enforcing a just construction and execution of the instrument. Mr. Seward sees — the public mind of the South sees more clearly — that an institution of the peculiar nature of slavery cannot long exist within the States if the powers of the federative government are to be swayed in active hostility to it, even though no violation of the express letter of the Constitution be perpetrated, and even though the hostile action be confined to a systematic use of the powers of the Government for the purposes of its destruction and to a systematic abdication of the powers of protection when they incidentally affect slavery in operating upon the communities in which it exists.

Criterion of moral right and duty.

The rule to which I have adverted is equally fallacious as a criterion of moral right and duty. No man has the right or duty to impose his own convictions upon others, or to govern his own conduct in his relations with others by his exclusive opinion or will. His right and duty in such cases are not absolute, but qualified. In practice no man can get along in his relations with others, even with those who are most subject to him, if he exercise his full legal or constitutional powers absolutely according to his individual opinion or will. On such terms no husband can live with his wife, no father with his children, no partner with his associates.

Duty of self-restraint.

Now the idea I wish to inculcate is that there is no moral wrong in our accepting the self-restraint upon the exercise of even our undoubted legal and constitutional powers which the experience of mankind has shown to be wise. It is upon the same idea, applied to our physical powers, that the public law of the world, which forbids the intervention of one State in the purely internal affairs of another, is built up.

When our fathers entered upon the work of forming the Union, they found the States existing as independent sove-

reignties. They might have constructed a system which would have been imperial in its character, subjecting all the internal affairs of the States to the dominion of a centralized government. Or they might have made the mixed system which they established imperial in respect to the subject of slavery within the States. Or, if failing to obtain the consent of any State to such a system, they might have excluded that State from the Union.

Idea of self-restraint the basis of our federative system.

Did they commit a moral wrong in choosing to leave the whole subject of slavery within each State to its separate judgment? I think that they did not. The decision which they made accorded with the whole theory on which they constructed the government. It was wise in itself; it was right. If the wisdom collected from the experience of the world in regard to government is to be relied on, the distribution of powers they adopted was the best; the depository of the trust of working out the problem of the superior and subject races within the States, if not perfect, was the safest which the nature of the case admitted. It is binding upon us not merely by the force of compact, not merely by a great principle of public law, but by its intrinsic wisdom and righteousness.

Not wrong, but wise and right.

It is no answer to this reasoning to say that the dominant race in a State where slavery exists is, upon this question an interested party as well as the judge. Such is the position of the governing power in every human society; and yet so wonderful are the laws of mutual action and influence of the several parts of the social mechanism that it has generally been able to work out the welfare of all better than foreign government, and better than propagandism of any system by foreign force. The selfishness of the one, modified by so many restraints, is rarely so dangerous as the inexpert ignorance and impracticable experiments of the others. I cannot think it a misfortune that, according to the system of our fathers, no appeal lies from the white man of the States where slavery exists to the white man of the other States.

Objection answered.

It is not a moral wrong to construe and execute the provisions of the Constitution affecting this question, and even to extend and apply them to incidental questions not foreseen at its formation, in accordance with the plan and in the spirit of comprehensive wisdom in which that instrument was conceived.

3. I come now to the position of the Republican party on the Territorial question. I understand that position to be that it is the right and duty of the people, through the federative government, effectually to prevent the extension of slavery beyond the geographical area in which it now exists within the present States.

The territorial question.

The Chicago platform applies the doctrine, that all men are entitled to liberty, to the black race, without any qualification of place, time, or circumstances; and applies the principle of restriction to all the Territories. Mr. Seward has lately restated the position of the Republican party in these words: "Our responsibilities are limited to the States yet to come into the Union, and we will apply our system to them."

Mr. Lincoln's speeches are full of denunciations of "the further spread of slavery," the restriction of which will, he predicts, "place it where the public mind will rest in the belief that it is in the course of ultimate extinction." "We know," says he, "the opening of new countries tends to the perpetuation of the institution, and so does keep men in slavery who would otherwise be free." "Nothing," he again says, "will make you successful, but setting up a policy which shall treat the thing as wrong. . . . This Government is expressly charged with the duty of providing for the general welfare. We believe that the spreading out and perpetuity of the institution of slavery impairs the general welfare. . . . To repress this thing, we think, is providing for the general welfare."

The philosophical idea on which the policy of restriction rests is that if the system of slavery be absolutely confined to a fixed geographical area, the emigration of the white race who wish to retain the system, and

Theory on which absolute restriction is founded.

of the black race held under it, will be restrained; that both races will go on increasing by births; that the population within that area becoming more and more dense, the cost of subsisting the slave will press with constantly augmenting force upon the value of his labor, until the master ceases to derive any surplus, and voluntarily emancipates the slave.

This idea is sometimes expressed in the affirmative sense of extinguishing slavery, and sometimes in the negative sense of refusing to perpetuate it; but the means and the results are identical in both cases.

Object of the policy, and mode of its enforcement.

The policy of restriction aims to control, directly and immediately, the distribution between the occupied and unoccupied portions of the continent belonging to us of the eight and a half millions of whites and four millions of blacks now co-existing in the fifteen Southern States and of all their descendants, so long as the present relation between the two races shall continue. It aims indirectly and eventually to subvert the relation which now exists between the two races. The Republican party proposes to establish this policy by a combination of majorities of the people of the Northern States, acting through the Federal Government, against the unanimous opposition of the whole people of the fifteen Southern States. The judgment of the Northern States, pure and simple, adversely to the judgment of the Southern States, is to take upon itself and prescribe and enforce its own solution of this great problem of races, their distribution and relations, which reaches to the very social life-centres of fifteen Southern States.

A mere abstraction at present.

It is true that, at present, so far as the Territories are concerned, the policy is a mere theory. There is no Territory whose destiny is practically in dispute. The area within the fifteen Southern States is more than the growth and expansion of the social and industrial systems of the South can at present occupy.

Might not the North rest in the hope that the next generation, when it should have occasion to act practically, would do

so with larger experience and greater wisdom? Might it not wait and see? Is it necessary for us to seize the powers of the Government to establish and enforce any policy so far in advance, — especially by the dangerous machinery of a purely Northern party creating in practice a purely Northern government, — more especially at the hazard of scattering in ruins the glorious fabric of civil liberty reared by our fathers?

The theory analyzed.

But let us confront this theory as a permanent and final policy. Let us analyze it, and see what would be its future value, and whether it can ever become established.

Natural and material laws.

Before entering on that discussion, I pause to trace the natural and material laws which are working out the distribution of races on our own portion of this continent, and shaping the social and industrial systems of the new States.

Whoever will study the course of emigration from the old States to the unsettled lands of the West, will find that in the main it follows the adaptations of the new region to the industrial, domestic, and social habitudes of those who seek to better their condition by the use of cheaper and richer soils. The current of Northern emigration does not deviate largely from certain parallels of latitude. The current of Southern emigration, tending in the same general direction, spreads out, perhaps deflects, to the southwest. The volume of the Northern current is from twice to three times as large as that of the Southern current, and therefore tends to press southwardly the line where the two touch each other. Geographical causes favor this result. As you reach the eastern border of Texas, the Gulf shore turns toward the south; as you pass Missouri, you begin to ascend to the more austere climates of the great slope of the Rocky Mountains.

Material causes intervene to turn a portion of the Southern emigration to the southwest, and also to separate the element of slavery and to carry that to the southwest.

Slavery withdraws from the track of Northern emigration.

The result is that slavery has no tendency to extend itself in or toward the track of Northern settlers. On the contrary, it is withdrawing and moving toward the tropics. Obvious before, this law has been rendered more conspicuous, and more potential to mature its fruits rapidly, by the remarkable events which have characterized the last ten or fifteen years.

Material causes accelerate.

The great and steady influx of gold, acting upon the circulating medium and the systems of credit, has, to an extraordinary degree, stimulated production and consumption throughout all Christendom. One effect is seen in the transcendent growth of the foreign trade of all the civilized nations; another is in an improvement of the physical condition of the masses, and an enlargement of their command over the necessaries, comforts, and even luxuries of life, greater perhaps than they have hitherto attained in any one century.

Cotton has been found to be the cheapest and most convenient material for human clothing, — which, after food and shelter, is the first object of the enlarged means of expenditure by the masses. The spindle and the loom could be multiplied to keep pace with the augmenting demand, but negro hands to cultivate the cotton-fields could not. They must wait the slow course of nature, or be diverted from other employments; and even both resources have been thus far insufficient. Through the war in the Crimea and the war in Italy, through the panic of 1854 and the revulsion of 1857, cotton has, in the main, held the even tenor of its way, in a range of high prices; while iron, coal, lumber, sugar, and breadstuffs have undergone extreme and violent fluctuations. Cotton has been unceasingly outbidding other employments for negro hands. It has within ten years doubled — probably more than doubled — the market value of all such labor. A man who to-day employs slaves in raising wheat or corn on the southern bank of the Ohio uses labor at least twice as costly as it was ten years ago. His neighbor on the northern bank finds the moderate advance in free labor resulting from the increase in

general prices compensated by improved machinery, and can produce wheat as cheaply as ten years ago.

Cotton is struggling hard to translate the black race held in slavery to the seats of its own and kindred cultures. Family and social habits, an honorable sentiment against selling dependents toward whom the worth and piety of the South consider themselves as trustees, resists; but the changes of life are inevitable, and the social laws at last prevail, as the unceasing current of a stream outlasts the strokes of the swimmer. I see every day testimonies of the actual working of these tendencies. I read not long ago, in the "Evening Post," an extract from the St. Louis "Democrat," stating that one hundred slaves daily left St. Louis for the South. That statement may have been inaccurate as a matter of detail, but the general fact cannot be questioned.

If, then, slavery has no capacity to extend itself, in any practical degree, into or toward the track of Northern emigration, let us now inquire what would be the results of the restrictive policy applied to the track of Southern emigration.

Restriction in the track of Southern emigration.

This, I have already observed, is at present — perhaps for all our generation — a purely theoretical question. But let us imagine that it were now a practical question. Let us suppose that all the eight and a half millions of whites and four millions of blacks composing the population of the fifteen Southern States were concentrated in the region east of the boundary between Alabama and Mississippi.

I do not now decide whether the degree of density required for the perfection of the experiment would even then have been attained; and in the progress toward that density, doubtless the whites not holding slaves would have been, to a large extent, expelled. But assume the conditions to be such that the cost of subsisting the slave would approach the value of his labor. I should like to have our philosophers and philanthropists who advise the experiment solve some difficulties which we must anticipate.

1. What is there in human history to warrant the idea that a people, not having yet consented to self-destruction, could be confined on one side of an imaginary line, with their physical condition steadily approximating to the want and misery which attend excessive density of population, when on the other side of that imaginary line unoccupied and fertile lands invite them to abundance and prosperity? What degree of power in the Government would be required to enforce a law imposing such a policy upon even a feeble community? What degree of coercion would be required against eight and a half millions of our race, — three times as many as achieved our revolution? Against how many and in what proportions of the two races such coercion would have to be exerted when all the present territory should be filled up with population to the requisite degree of density, it is impossible to predict; but it is perfectly safe to say that the policy proposed by the Republican party to be theoretically adopted as a finality, at vast hazard of general ruin, a generation in advance of the time when it could take full practical effect, would, as soon as that time should arrive, prove wholly impracticable without the consent of the people to whom it would be applied, as with that consent it would be wholly unnecessary.

Impracticable or unnecessary.

Is it expected that the people to whom the system is to be applied will be blind and deaf until it shall have approached such fatal results? Is it not inevitable that they will be as prompt to resist and repel as you will be to organize and inflict your system?

2. Does not the nature of the process imply a constantly progressive deterioration in the physical condition of the slave? Will not the master be forced, by the necessity of self-preservation, into a struggle to over-work and under-feed the slave, until, failing to make the products of labor meet the cost of subsisting the laborer, he succumbs, and the social and industrial systems topple in common ruin? Has not philanthropy run mad when it proposes to work out

False philanthropy.

the liberation of the slave by such a process? Does it not arrogate to itself the infallibility of Divine wisdom when, out of humanity to the slave, it would, by force of law, starve him into freedom?

Does it not arrogate to itself the power of the Almighty when it attempts to establish such a system over fifteen communities, with complete governments, with a population of twelve and a half millions, and occupying a region larger than half of Europe, by external legislation enforced by external power? If no Government known to history has ever been strong enough to do this thing, what terms can adequately characterize the wild hallucination of attempting it through the limited powers and under the self-checking forms of a confederation?

3. As the policy operates to restrain the emigration of the owner and the slave, but not the white man who holds no slaves, must not the effect be to cause the latter to emigrate? Must not the proportion of the black race to the white be incessantly increasing by the operation of a permanent cause? At last, when the system culminates in emancipation, must not the result be communities almost exclusively of blacks? Can the whites live in such communities? Should we not, in the ultimate effects of the restrictive policy, convert our sister States into negro governments? Shall we then allow them equality in our Union, as our Republican friends propose at the coming election to allow the blacks of this State equality in the elective franchise? Would it not, on the whole, be better to let the black man go toward the tropics as best he may, bond or free, so that, if at last we come to dissolve our Union, the dissolution may be only with the black republics of the tropics, and we may at least retain the original thirteen that fought the battle of our independence, and the riparian States that control the navigation of the Mississippi, with white men for the governing power?

4. Have we sufficiently considered whether acting upon slavery in the Territories, in order to react upon it within

the States, even if it were within our literal authority, would not be in some sort a fraud on the distribution of powers provided by the Constitution? May a man get the street commissioner to wall up the entrance to my house on the pretext that it is only exercising the rights of the public over the streets which belong to the public? May my neighbor flood my farm because the dam which creates the overflow is built upon his own land? May a man plant his foot firmly on the safety-valve, and silence the engineer by saying that he does not interfere with the boiler? Now is not the natural increase by which one hundred and twenty thousand are every year added to the slave population as much a necessity as the existence of the present four millions? Is not another four millions of blacks within the next twenty-five years just as much a fact as the present four millions? Can any man stop it? Is not the fact which is to come an inevitable incident to the fact which now exists? Must it not be dealt with as a part of the one great fact? To ignore this inevitable incident, is it not shallow in philosophy, inadequate in policy, disastrous failure in government? And to whom naturally belongs the solution of the problem it creates, except to those communities who have the great trust of the principal fact, and whom we do not propose even to consult? Ought we to refuse even to join with ourselves in determining such a question those who must reap the good or bear the ill of our decision in a case which, so far as the track of Southern emigration is concerned, cannot affect us in the least? Should we attempt to establish over them a policy — even if we sincerely think it best for them — which nobody among them can be found to approve or uphold?

5. Would not a wise man, with a conscientious sense of responsibility, although theoretically opposed to slavery, if he were to be invested with absolute power over the primary fact of slavery within the States, or of the incidental fact of its natural growth, find himself unable, just in proportion as he should study these facts, to deal with them on any artificial

system of human devising? Well might Mr. Seward say that John Quincy Adams died despairing of a peaceful solution of the question; for he had not, as Mr. Seward has not, any of that master philosophy for such a problem which says to the Federal Government: Let it alone.

6. If in the attempt to solve this problem according to our own ideas, and to enforce our solution, through the federative government, adversely to the whole public opinion of the Southern States, we should break up the constitutional compact between us, should we not, while failing to establish our policy with its imaginary benefits, become the authors of the most transcendent calamity any generation has ever been able to inflict upon mankind?

Policy of the fathers.

The traditional policy of our Government, established by the fathers, and followed until 1850, is to be studied in all the acts of Congress upon the subject of slavery, considered collectively.

It was, — First, to prohibit slavery by Federal legislation, at the instance of the North, and with the consent of the South, in the Territories lying substantially within the track of Northern emigration. Secondly, to leave the Territories lying in the track of Southern emigration without any Federal legislation prohibiting slavery.

The ordinance of 1787, applying the restriction to all Territories north of the Ohio, and the Missouri Compromise of 1820, applying it to all Territories north of the southern line of Missouri, were the parent measures, to which all the other acts were subordinate. None of the other acts of restriction extended their operation south of the lines established by those measures.

At the adoption of the Constitution the Southern States consisted of a scattering population upon the eastern slopes of the Alleghanies. All the people in the region now embraced in States lying west of the ridge did not much exceed the number of persons to-day congregated in a single ward of the city of New York.

Emigration has pushed westward until almost two thirds of the present population of the South is in a region which seventy years ago was a wilderness. On the west of Virginia has sprung up Kentucky; on the west of North Carolina, Tennessee; on the west of Georgia and South Carolina, Alabama, and afterward Mississippi — all formed out of the original domain of the United States.

An entire tier of States on the west bank of the Mississippi, comprising Louisiana, Arkansas, and Missouri, have been added out of Mr. Jefferson's Louisiana purchase. This tier embraces the whole track of the Southern emigration, extending to the north even beyond that track. It carries the divisional line in the west, which had been deflected to the south by the adoption of the diagonal course of the Ohio, back to a point somewhat northerly of the line which has become the boundary between the free and the slave systems in the original States, by the voluntary action of those States. Florida on the south and Texas on the southwest have been subsequently added.

Now in all this region, embracing the entire track of the Southern emigration, there has been no legislation of the federative government interfering with the natural course of Southern emigration, or disturbing the action of the physical laws by which it is governed, or preventing the establishment by the new communities thus formed of industrial and social systems similar to those of the States from which the emigration proceeded.

I know the idea is inculcated that the Government has abstained from such legislation only from defect of power or in submission to actual compact.

Their self-restraint voluntary.

To this I answer, — first, that if this allegation were true, it would show that the policy of universal restriction of slavery which has been ascribed to the fathers was at best but a theory never reduced to practice, nor of much weight as indicating the matured judgment as to practical legislation of statesmen who were never called on to put a speculative

opinion into operation, or of the people who were never called on to submit to its effects; secondly, that there is no foundation whatever for the allegation that the fathers would have applied the restrictive system to the track of Southern emigration if they could, or that they omitted to do so from any such necessity as is pretended, or from any reason other than their ideas of self-restraint which a wise policy imposes on practical statesmen dealing with such a question. They had every means, method, and power open to their use which have been proposed to be employed for that purpose in our modern times. I say this advisedly; and though I cannot now stop to discuss details, I hold myself ready to maintain the statement.

Washington, Jefferson, and Madison, all Virginians, were undoubtedly opposed in theory to slavery, and looked forward to its ultimate extinction; but they were practical statesmen, and they did not make any serious endeavors to surmount the intrinsic difficulties of the subject, either in Virginia or Kentucky, where it was open to their legal and constitutional action, still less in Southern territories through the federative government. They probably were never able to see clearly any satisfactory method and means of giving effect to their desires, even in the infancy of the institution; and they wisely left it to itself until the people interested should feel themselves able to solve the problem. No men had more power to change the practical policy and practical results which I have shown to be facts of our history. That policy grew up and matured its fruits, during the period of their administrations and of their unapproachable influence over the public mind of this country, without opposition or dissent from them, often with their concurrence. Jefferson and Madison survived the time of the Missouri controversy; they were then in retirement, free from all bias of political aspiration, sedulous only for the welfare and happiness of their country, and certainly not wanting in philanthropy toward any of the human race. They have both left on record their earnest, thoughtful, warning protest against the whole scheme of applying through Federal

legislation the restrictive system to Southern territory, contrary to the will of the existing Southern States. That a party organization exclusively Northern, dominating in the Federal Government, should enforce such a system was never within their contemplation. That fact, if it shall be to-day inevitable, will be the political calamity of a later generation.

Mode and terms of adjusting the controversy.

I assert that a controversy between powerful communities organized into governments of a nature like that which now divides the North and South, can be settled only by convention or by war. I affirm this upon the universal principles of human nature and the collective experience of all mankind. I aver it in defiance of the babbling speech-makers who set up for statesmen without possessing or understanding one element of that character — who pretend to superiority of principle because they denounce compromise, which is, in the very nature of things, the only solution possible of such a difference between such parties.

By convention I mean, not an ancient compact of confederation, but a fresh, living, practical assent of the wills of the parties to conditions in which those wills are moderately and fairly represented, so that the acquiescence of both parties may be secured.

Interests of the parties.

We must study the practical interests of both parties in the questions, in order to see what conditions will be adequate. The elements of the case are simple.

The Northern States have a direct and important interest in keeping the natural course of their emigration into the Territories substantially undisturbed, with freedom to such of their people as overflow into the Territories to establish in their new seats such systems of industry and society as they have been accustomed to at home.

The Southern States have exactly the same interest. Both have an indirect interest in the formation of new States, as it affects the balance of power between the two classes in the confederation.

Now in respect to the first interest, so long as the Federal

Government refrains from interference, there is really no conflict except in imagination. For as long a future as the human vision can clearly scan, both have room enough, and they do not desire to occupy the same space. Slavery not only refuses to go into or toward the track of the Northern settlers in the Territories, but withdraws faster than white labor can replace it in the Territories and contiguous part of adjacent States.

At an early period Southern settlers touched the parts of Ohio, Indiana, and Illinois which encroached upon their track, sooner than Northern settlers reached any portion of those States, and a feeble disposition to carry slavery there was manifested; but it was ineffectual.

The only other tendency to conflict arose on the border of Kansas, contiguous to Missouri. The divisional line established by the admission of Missouri with slavery and the restriction of slavery from the Territories west of it down to its southernmost boundary, became at this point perpendicular to the natural line of division between the two westward streams of emigration. It would not have been strange, therefore, if some settlers had crossed the boundary between the two with slavery. But it could gain no stable footing there; for the tendency for it to move down southward from Missouri was stronger than for it to ascend westward into Kansas; and a vast emigration from the Northern hives was swarming toward both.

It is my well-considered conviction that not one State is now free from slavery which would have accepted it if no restriction by Federal legislation had ever been enacted.

Compromise of the Territorial question has two forms, — the one is by a divisional line practically agreed upon by the two sections, and declared by Act of Congress; the other is worked out by natural and material causes, and finally declared by each locality when it is admitted as a State. Forms of compromise.

As an original question, I think the latter mode the best; for it avoids the struggle in fixing the line by the federative government, and it will more exactly respect the natural courses of emigration.

As to the interest of the two parties in the balance of power in the confederated government, the North certainly has nothing to fear. It gains in population at least seven hundred thousand as often as the South gains three hundred thousand, and it can form new States more rapidly. It has the advantage of greater numbers. The South, when attacked, has the advantage of greater unity.

Union or disunion.

Can the North understand the full import of the federative idea? Can it apply that idea completely to all the relations of the slavery question?

That is the problem of the continued existence of our Union in a government of confederated States. Majorities in all the Northern States against all the South are not without extreme difficulty formed or combined, and, being wholly unnatural, cannot last long enough to dictate or to fashion a permanent policy for the Union.

Such a result could never be reached except amid an extraordinary concurrence of circumstances, and in an entire failure of the Northern people to see that the conflict is anything more to the Southern people than it appears to be in the North, — an ordinary struggle of political parties. This state of parties is only a paroxysm. Yet the North may, in a paroxysm, alarm and repel the South out of the Union.

Logical result after disunion.

If it should do so, and if we should yet escape or recover from civil war, should we not soon wish to establish treaties of peace and of free trade between them and us, and to restore unobstructed intercourse between our citizens? Might we not even desire an alliance for common defence? Is it not clear that such arrangements would be eminently wise and eminently conducive to the prosperity and welfare of both parties? Would not such an arrangement be a salutary extension and improvement of the system which modern civilization is applying by diplomacy between independent nations all over the world?

If these results were once successfully accomplished, we should have restored an imperfect approach, poor and miser-

able indeed — far worse than the old confederation — to what our great forefathers intended in our federative government, which they framed and which we shall have broken into pieces; in that case should we have any idea that it would be either our moral right or duty to interfere in any manner with slavery within their borders, or to suppress by force the natural growth of new communities like their own by the inevitable increase of their population?

Is it necessary for us to travel through all this dreary cycle to reach a result which it is just as wise, just as necessary for us now to adopt? Through what human misery, what individual ruin, what public calamity, should we then have attained a compulsory, and no doubt contented, inaction as to slavery in all those aspects in which it now makes us fanatical!

I say contented inaction; for in that case we should see and feel that it was no more our moral right or duty to interfere with slavery in a Southern State or Territory than in the Empire of Brazil. We should thus, over the ruins of our confederated government, have been brought to some sense of the true theory of local self-government under our Federal Constitution. Our misfortune would be that our wisdom had come too late.

Personal explanation.

It is with reluctance that I mingle one word of a personal nature in this discussion. But I must answer my personal friends of the "Evening Post," who have courteously invited this discussion, so far as to say that I never held any opinion which could justify either the policy or the organization of the Republican party. If I had done so, I should not hesitate frankly to renounce so grave an error. I admit consistency, so far as it indicates conscientious deliberation and prudence in adopting opinions or in conduct, to be a quality which inspires confidence. But I do not consider it so great a virtue as a fixed purpose to do right; and a single modification in a man's opinions on one of the questions which have occupied the public mind during the period of twenty-five years, ought not to shake an established

character for consistency, especially if it be moderate, reasonable, and free from every taint of selfishness. But, in truth, I never adopted the doctrine of absolute and universal exclusion, by Federal legislation, of slavery from all Territories, and still less that of the exclusion of new Slave States, or the philosophical theory on which the doctrines are founded.

Mr. Greeley, last fall, detailed and repeated his personal recollection of the anti-Texas meeting of 1844 at the Tabernacle, in which, as he alleged, I joined with him. His obvious motive was to embitter against me the resentments of Republicans who once belonged to the school of radical democracy. A candidate when under the actual circumstances — as was known to the gentleman at whose instance I was nominated, and to all my friends — an election would have been a calamity to me, I felt at liberty to treat this misstatement (misrecollection, as I am willing to believe it) as I treated all similar ones of the canvass, with silent indifference. In 1844 I was strongly inclined to the theory in respect to the tendency of slavery to confine itself to its own natural track, which subsequent reflection has established in my mind, and which I have developed in this letter; and I neither said nor did anything inconsistent with it. I thought then that the question ought to be decided, not on the ideas either of New England or of Mr. Calhoun, but on general considerations of national policy; that the acquisition of Texas was expedient, but ought to be conducted in a prudent and proper manner. The provincial ideas of New England were not more offended by that measure than by the acquisition of Louisiana. The New Englanders did not so strongly threaten to dissolve the Union as they did on the same grounds when the Act was accomplished which gave the Mississippi to us all, and to the North, Iowa, Minnesota, and the Territories stretching to the Pacific. I presume that those from whom I then differed, and who now impeach my consistency, will advise a civil war to keep Texas and her kindred States in the Union if they should attempt to go out.

On the acquisition of California the North universally

claimed that its status should not be changed by the act of the Federal Government. That was then the leading idea of the radical Democrats of this State, as expressed in their most authentic and authoritative declaration. In assenting to that abstract idea, beyond which I never individually went, I did so in a sense of equitable partition, under which we had justified our acceptance of Texas, and might accept Cuba, — an abstract idea, however, which it was soon seen could not afford a perfect solution of the whole question in all its future aspects and applications, and which at that time was practically satisfied by the admission of California. Since that time the increasing development of the tendency of slavery to withdraw from even a contiguity to the track of Northern emigration, and the immense influx of population from abroad, ought to convince every reflecting mind that, whatever legal theory is adopted, our old habit of Federal restriction over our portion of the Territories can be safely abandoned, while any theory which should interfere with the track of Southern emigration cannot be safely or rightfully applied by the legislation of the Federal Government.

The division in the Democratic party of this State in 1848 bears no analogy to the Republican organization of to-day. It would not have happened, except for what was deemed to be a violation of the right of representation in a National Convention; and the division was the year after composed, while the slavery question was still unsettled. Wise or unwise, right or wrong, it was in substance a mere protest. It is known that my personal wish then was that its form should not have gone beyond its true practical character. The scheme of a permanent Northern party was not, so far as I know, entertained among the radical Democrats, except in the mind of one man,[1] with whom it was a mere undeveloped idea, soon abandoned, but resumed in 1855, when he led his followers into the Republican camp. The worst consequence of the division in 1848 was, not like the division of the Democratic party now,

[1] [Preston King, United States Senator from New York. — Ed.]

to bring in a sectional candidate of a sectional party, but merely to let in a national party, with Taylor and Fillmore at its head, under whom the slavery questions were all wisely compromised. On that adjustment I have ever stood. Willing to accept the modern policy of total Federal non-action in place of the system of division by Federal legislation, I nevertheless used all my influence, at whatever sacrifice of relations, to resist the raising of the question of the repeal of the Missouri Compromise, because I thought a theoretical conformity to even a wise system dearly purchased by breaking the tradition of ancient pacification on such a question and between such parties. At the same time, merely a private citizen myself, I appreciate the difficulty a public man has in acting against a general principle for the sake of merely prudential considerations, especially amid a conflict of sections and of parties. I foresaw, on the formation of the Republican party, the evils and dangers which it would create if it should succeed, as it could not have done without great adventitious aids, in combining an unbroken mass of Northern majorities; and I communicated my opinion to former political associates who joined the new organization. It is known to many that my whole action since has been dictated by this conviction. I have gone through this explanation on an invitation from those who were once my political as well as personal friends, in order to demonstrate that I have every right to be heard by them, fairly and candidly, when I now state the limitations of our rights and duties.

Let me say also that it was natural that on the happening of the events which gave rise to these questions, the Northern mind should at first apply to them — too loosely and broadly, I admit — the ideas which it had been accustomed to apply to the subject of slavery at home, — ideas which the progress of events and the maturing of opinion have shown must be greatly limited in their application in order to adapt them to the theory of our federative system.

Let me add, that in renouncing the habit of Federal legisla-

tion as to slavery in which we all grew up, and advocating the idea of Federal non-interference with the industrial system of the South, I but conform to that sound political philosophy which, upon all the great industrial questions of our times, has always guided, not myself alone, but all radical Democrats, and which the "Evening Post," in all cases, with this single inconsistent, disastrous exception, even now applies and ably champions, in conspicuous antagonism to the entire political theory and persistent practice of the party with which it is now, in my judgment, unnaturally, and therefore, I hope, but temporarily associated.

My conclusions are —

Conclusions.

1. That the Southern States will not, by any possibility, accept the avowed creed of the Republican party as the permanent policy of the federative government as to slavery, either in the States or Territories; and,

2. That upon this creed the Republican party will not establish any affiliations with considerable minorities in the Southern States. All the evidence is that the non-slaveholders there are, generally, at least, as hostile to the Republican creed as the slaveholders. All experience shows that an interest very far less extensive, important, and fundamental than that of the slaveholders in the South usually unites the whole local community in its support, especially against outside interference. And in this case, besides, there is a powerful motive, common to all, to preserve the social supremacy of their race. The very attempt to organize, by outside instigation, a separate class of non-slaveholders against the general opinion of these communities, would be itself a new and intolerable irritation. The dream of a Republican party in the South is a mere illusion.

3. A condition of parties in which the federative government shall be carried on by a party having no affiliations in the Southern States, is impossible to continue. Such a government would be out of all relation to those States. It would have neither the nerves of sensation, which convey intelligence to the intellect of the body politic, nor the ligaments and

muscles which hold its parts together and move them in harmony. It would be in substance the government of one people by another people. That system will not do with our race. The fifteen organized States to be subjected to it now occupy a region as large as France, Italy, the Austrian Empire, the German States, and the British Isles. In my judgment, such a condition of things could not become complete in all the departments of the Government before the antagonism of the minority would throw off the Government, by secession from the Union.

4. Nothing short of the recession of the Republican party to the point of total and absolute non-action on the subject of slavery in the States and Territories could enable it to reconcile to itself the people of the South. Even then it would have great and fixed antipathies to overcome; and men and parties act chiefly from habit.

5. Will the Republican party submit itself to this inevitable necessity to revolutionize its whole character? To attempt this change and not to perish as a dominant party is barely possible. Not to attempt and accomplish it, and yet to live as an ascendent power in our Union, is totally impossible. The Republican party must become as national in its structure as the Whig party was, and submit to the necessary conditions of such nationality, in order to be capable of governing the country. It must travel through the entire cycle of retrogression, and demonstrate that its existence in its present form was a mistake. The national Whig party, if it had not been disbanded, might much sooner and more easily have taken the government, and could have done everything which is possible for the Republican party to accomplish, without dissolving the Union.

6. The election of Mr. Lincoln, if it should occur, will place the executive head of the Federal Government in the false and unnatural position I have depicted; that is to say, place it out of all relation to the people of fifteen States. To the eyes of these States it appears as the forerunner of a complete system of the same character in the Federal Government. It fills their people with alarm; it excites strong resentments. It will be a

small alleviation that the result will have come about in some degree by divisions in the Democratic party, and by dexterous use of electoral forms, whereby the Northern majorities will constitute little over one third of the whole vote cast. It will be a greater alleviation if the House of Representatives should change adversely to the Republican party.

7. Our Northern people look at this thing in the light of the ideas which prepossess their own minds. They overlook one fact which renders the position of the parties unequal, — the fact that slavery exists at the South and not at the North. They claim equality in the operation of their ideas with those of the other party, which is in many respects peculiarly and exclusively affected by their operation. They ask, have we not a right to elect a President in a constitutional manner by our votes? You have, in obedience to the fundamental ideas of our confederation, no more moral right to do so on the basis of your present party organization than you have to do a thousand other things which the laws and Constitution allow, but which reason, justice, public policy, and fraternal sympathy forbid. The South gave us Washington, Jefferson, Madison, Monroe, Jackson, Polk, Taylor, and we voted for them all. We offer them Lincoln, and they say they cannot vote for him because his policy is fatal to what, to them, is a vital interest, while to us it is but an abstract idea. We answer that we know better than they; if they will not agree with us we will not compromise, we will have our own way!

8. A Southern partisan Presidency on such a controversy, in unison with the Southern State Governments, would be an evil, even if unavoidable; but it would merely offend the ideas of the North. A Northern partisan Presidency on such a controversy, in conflict with the Southern State Governments, is manifestly pregnant with perils which no past experience has witnessed, and which threaten the whole fabric of our Union with swift destruction.

9. If we are not wise enough to abstain from creating such a state of things, what right have we to suppose the South will accept it with patience? Seeing the transcendent nature of

the interest, — they have not the restraint of a party among them holding the sentiments of the Northern majority, — they think that they are wronged, they feel put upon self-defence. Have we a right to assume that they will act with what, from our point of view, would be a prudent moderation? I fear that from the very election of Mr. Lincoln, if it unfortunately happen, we should be embarked upon a frightful agitation in all the South, — general alarm and excitement; State conventions to deliberate upon the continuance of the Union. I recoil from contemplating the but too probable consequences in which all this must end. I know that the most wise, prudent, conservative, and patriotic men of the most Union-loving States of the South are filled with consternation when they think of the great surge of popular excitement which they will be called on to breast.

10. What will Mr. Lincoln do? Can he be expected, as President, to understand the state of things in any other sense than that of his own partisan policy? Can he avoid the attempt to maintain the power of his party by the same means which will have acquired it? Can he emancipate himself from the dominion of the ideas, associations, and influences which will have accompanied him in his rise to power? Can he be expected to act in any new direction with sufficient breadth of view and firmness of purpose? If he shall fail adequately to respond to these great exigencies, the inevitable result as it presents itself to my judgment has been already sufficiently indicated.

11. If he should act in a spirit of large patriotism, what will be his position and means? The history of Jackson's Administration throws some light upon the difficulties which, in a vastly aggravated form, he may have to encounter, and upon the methods of action by which, if at all, they must be overcome.

Jackson had to deal with a question comparatively unimportant and far less purely sectional. As a Southern man of great popularity and renown, he stood strong in the confidence of all the Southern people, whose votes had just contributed to

raise him to power. He was the head of a strong Jacksonian party organization in every Southern State. Clay, the head of the adverse tariff interest, was also a Southern man, and at the same time the head of a great party in all those States. Yet, with all these immense advantages, Jackson, because the controversy was partly sectional, was compelled to exert all his power and to display all his courage in order, with the aid of Clay and Webster, to accomplish its adjustment, even upon a basis of compromise and concession; and he accomplished this result at last by fighting the battle through the public opinion of the disaffected section.

Lincoln, if he should, in a crisis far more difficult, stand in the place of Jackson to confront a public disorder infinitely more extensive, deeply seated, and dangerous,— and if he might strain his vision a thousand miles over the region of disaffection, — would see not one adherent, not one leader of local opinion with whom he was in established relations of friendship, sympathy, or support, not one representative to speak in his name, with power to win the ear of the masses, not one of six hundred newspapers devoted to politics, and half that number devoted to other discussions, which had not been pre-occupying the minds of the people with distrust, hatred, or fear of him. Without any of the means by which combats of opinion are fought among a free people, himself an offence, an obstruction, instead of a power to save, — the whole strain, the whole shock of the crisis would be thrown upon the mere intrinsic strength of our Federal Government.

I, for one, cannot assent to the creation of such a state of things. I have a faith in our popular system which never before faltered; but I dare not precipitate it upon such a trial. It is not a fair experiment. In my judgment, those who think it free from the most imminent peril display the courage of men who, having eyes, cannot see. An incredulity even more serene and stubborn, in the minds of monarchs, ministers, and peoples, has often been broken by revolution or by war. Such a crisis as that in which Lincoln's election would place our country can only be prudently treated after fully comprehending it.

History is full of illustrations of the inadequate policy which meets civil convulsions, step by step, with concessions, at every stage, insufficient and too late, because the authors of the policy could not anticipate events, and events would not wait.

Elect Lincoln, and we invite those perils which we cannot measure. We attempt in vain to conquer the submission of the South to an impracticable and intolerable policy; our only hope must be that as President he will abandon the creed, the principles and pledges on which he will have been elected. Defeat Lincoln, and all our great interests and hopes are, unquestionably, safe.

If thus, or in any mode, we escape the perils of which his election will be the signal, our noble ship of state will issue forth from the breakers now foaming around and ahead, and spring forward into the open sea in all the majesty of her strength and beauty. But if the Providence which has hitherto guided and guarded our country shall at last abandon us to our foolish and wicked strifes, I behold a far different scene.

It is too late! It is too late! We are upon the breakers. Whose eye quails now? Whose cheek blanches? It is not mine, who felt a "provident fear," and have done all I could. Where is the excellent President of the Chamber of Commerce, whom they perched up in the forecastle to assure us that a good look-out was kept for our safety? Where are the dozen "great stakes," as Mr. Webster used to call them, whom they planted closely around him to shut out from the sight of the crew the beacon erected by Washington? Where are the thoughtless, reckless seamen who taunted me with cowardice when I vainly strove to warn them? I hear only the wailing cry of selfish terror as I sit upon the straining timbers and watch the rage of the sea. My mind is filled, my heart swells with the thought, that yon wave which towers before us will engulf more of human happiness and human hopes than have perished in any one catastrophe since the world began.

S. J. TILDEN.

NEW YORK, Oct. 26, 1860.

XVIII.

On the 6th of February, 1863, some gentlemen met at Delmonico's Restaurant, in New York city, to devise "the best means of diffusing correct political knowledge." On the 13th the same gentlemen, with others, reassembled to complete the organization of "The Society for the Diffusion of Political Knowledge," the objects of which were more precisely defined in a constitution then and there adopted. Mr. Tilden was present at the second meeting, and was called upon to make some remarks, a brief but incorrect report of which got into the "Evening Post," and provoked from him the following letter.

His remarks consisted of a warning against the dangers besetting not only the Union, but constitutional government, liberty, and personal rights, from the violent and irregular modes of action which were proposed in almost every quarter, and of an endeavor to trace the proper limits of a patriotic opposition during a period when the Administration were conducting a war.

He believed, as he had believed in 1833, that the constitutional powers of the Government, if wisely employed, were perfectly adequate to carry it successfully through the crisis. He deprecated the general tendency to set aside the Constitution and the laws and to resort to revolutionary modes of action.

It is scarcely possible now to conceive of the existence of such an unsettled, not to say morbid, state of the public mind as prevailed in the presence of the great national alarm. One public journal, friendly to the Administration and having great influence with it, by frantic cries of "On to Richmond!" precipitated a movement of untrained volunteers, against the

judgment of all the high military authorities. This culminated in the disaster of Bull Run, and, as General Scott predicted it would, prolonged the war two years.[1] Another journal, likewise friendly to the Administration, proposed to set aside all constitutional authorities and install George Law in the conduct of the government. The *Habeas Corpus* was suspended by an Executive order,— an act which Congress alone had rightful authority to do. The Secretary of State and the Secretary at War showed scant respect for the restraints of constitutional law by a system of arbitrary arrests. The British Minister at Washington reported to his Government the boast of the Secretary of State that he could touch his little bell and arrest a man in Chicago, and touch it again and arrest another man in an opposite quarter of the country, adding, "Can Queen Victoria do as much?"

This letter, while containing an impressive warning against all irregular modes of action by the party in power and by the officers of the Government, likewise indicates a rule for the conduct of the Opposition, — that it should do nothing to weaken the arm of the Government engaged in the conduct of a war; and explains with philosophical clearness the reason why it must thus put unusual limits upon its criticism, and exercise unusual caution in the selection of its measures of opposition.

[1] The Magazine of American History, xii. 56.

THE PERILS OF THE UNION. — THE LIMITS OF A CONSTITUTIONAL OPPOSITION.

To the Editors of the Evening Post.

In the "Evening Post" of this afternoon appears a pretended report of remarks made by me at a private meeting of gentlemen held at Delmonico's last evening, which I think your senior editor would not be likely to credit, even though he saw it in a journal that derives its largest claim to public confidence from the authority his name gives to whatever it contains. I should not deem this publication, however it might misrepresent me, of sufficient importance to require a public notice, except for one single consideration. It is a studied attempt to give to the meeting the aspect of a revolutionary intrigue, and imputes to me expressions or implications countenancing in some degree a resort to revolutionary means to effect a change in the policy of the present Federal Administration.

At an ordinary time I should treat such an imputation with silent contempt. But the time is not ordinary — very far from it. There is a danger, yet unrevealed in our future, transcending the calamities we are now experiencing. The premonitions of it are in the wild ideas which, discarding the maxims and the habits of constitutional government for the expediency of the moment, grasp at revolutionary power as an instrument of every successive illusion in our national policy.

It illustrates how contagious this bad example is, when set by those who administer the Government during a period of public danger, that we daily hear from their partisans, and sometimes from their antagonists, propositions subversive of

all constitutional government and of our private rights and personal safety. There are few journals in this city in whose columns, during the present civil war, cannot be found invocations to violence against dissentients from their opinions. Among those failing to use their influence to restrain, but often giving countenance to this dangerous tendency, I lament to recall one whose early renown was earned by its advocacy of free discussion, personal rights, and local self-government. We were fast degenerating into a condition in which violence, exercised under the false pretence of lawful authority, or by mobs, was becoming the ordinary weapon of political discussion and partisan warfare, when the elections last fall reminded the party in power that it is not wholly irresponsible, and did something toward restoring that balance between masses representing different opinions, without which popular government is impracticable.

In a generation which finds itself, as ours now does, in a situation wholly novel, which is inexperienced in the larger politics, all of whose leading minds are the growth of a period of peaceful prosperity and of liberal self-esteem, I fear to see the public mind gradually becoming familiar with the dangerous instruments and methods of revolutionary action. The temptation to use them in aid of the theory, passion, interest, or partisanship of the hour, is immediate and urgent; the evil consequences are remote, contingent, and dimly seen, without the light of experience. That we have hitherto abstained from them is due mainly to the traditions and habits we inherited from our ancestors, wise through much costly experience. I do not think these traditions and habits can be safely broken up. Never once, on any occasion, at any time, in any place, have I failed to lift my voice against any tendency of this kind, from whatever source it proceeded. I may, perhaps, have carried my solicitude upon this subject too far. That is not my opinion. Often when honest, patriotic men, writhing under a sense of public danger, intensified by a future into which no eye can penetrate, have appealed to me to say what we could

do to save the country, I have had occasion to counsel patience with errors which were drifting us as well as their authors to swift destruction; a revival of the sense that the men who at present administer the Government are our constitutional and legal agents, and that, though they claim from us our full share of the burdens and sacrifices which their policy imposes, without the slightest deference to our convictions in respect to the public interests and public safety, we must still loyally accept disappointment and national disaster, if they should come before the organism of the Government can be reclaimed to a better policy in the due course of the elections.

It was some observations of this precise nature, more forbearing than I am now using, made while I was responding to a similar inquiry, that your reporter, by suppression and inversion, has distorted into exactly the opposite import. I had no information of anything that was intended to be proposed at that meeting, or who was to be present, beyond what was conveyed by the call shown to me a few hours previously. I attended, not because I deemed the occasion of much practical moment, — especially as an informal and preliminary meeting, — but out of deference to the solicitude of men whose character and motives I unqualifiedly respect. I heard there no suggestion which was not moderate, patriotic, and constitutional. No allusion to peace was made. Some of the gentlemen I know to be of that class called War Democrats; and one, at least, a Republican. In my opinion the first proposition for a dishonorable peace will come, not from those who foresaw and endeavored to avert civil war, but from that class of the Republicans who were, in a peculiar degree, its authors.

But the ever-recurring question to the minds of those who think the policy of the Administration has been unwise and generally inadequate and "too late," and often totally impracticable, yet remains, — What can those who think so do? Is there any remedy, or any relief? Can we influence, in any degree, the Administration that represents us in its calamities,

if not in its counsels? Will it listen to any suggestion we can offer? Will it heed any warning we can give?

Slowly and sorrowfully, after eighteen months of anxious effort, beginning in November, 1860, I yielded to the conviction that we must experience and exhaust each calamity before we can make it visible to our brethren and friends who at present hold unchecked an unbalanced sway over the action of the Federal Government. The controlling intellects of the Administration accept as the guide of their policy, or reflect their own vagaries, through the worst element of their own adherents, — blind partisans, visionary theorists, impracticable philanthropists, sensation journalists. The illusion which misled their minds before and at their advent to power is constantly reproduced in new forms and new applications at every successive stage of their career. It is the voyage of a ship with a false compass. Particular deviations are discovered after they have been committed; but they recur in an indefinite series, because their source remains as prolific as at first.

I did not say this at the meeting; but, compelled to restate my opinions, I do not hesitate to avow to the public what I believe to be the truth.

The substance of what I did say was that the dissemination of documents teaching the fundamental ideas of civil liberty and constitutional government could do no harm, and might be useful, in a time when men's minds are unsettled; that, in my judgment, party action was at present wholly unnecessary, believing, as I did, that future elections would amply take care of themselves; that great caution should be exercised as to the character of all publications, authorized or issued, in respect to their practical bearing on the condition of our affairs; that, after all, if we would preserve free institutions among ourselves, or reconstruct the edifice of our Federal Union, it must be chiefly through the lessons of the great teacher, — Experience; that in a time of war we could not deal with our Government, although disapproving its policy, without more reserve

than was necessary in debating an administrative question during a period of peace; that the reason was, that if we should paralyze the arm of our own Government, we yet could not stay the arm of the public enemy, striking at us through it; that it was this peculiarity which had sometimes caused minorities to be suppressed in the presence of public danger, and made such periods perilous to civil liberty; that the generation which embraced Washington, Jefferson, Franklin, Madison, and Hamilton, and which framed the glorious fabric of American constitutional federative government, had been educated for their work by a quarter of a century of experience in civil commotions; that their intellects had been employed in studying the fundamental questions of government and society in the lights of history, while they were daily reducing its lessons to practice, until they were able to limit theory by practice, and to enlighten practice by theory; that the next generation, which embraced Jackson, Clay, Webster, Wright, and their compeers, had the fresh traditions of their fathers; that within the last ten years that generation had wholly disappeared; that the present generation — not inferior in intelligence, nor, perhaps, in dormant public virtue — had neither experience nor traditions as a practical guide for their conduct; that the statesmen of the present time had, almost without an exception, been born and educated and had attained their political eminence during a period of prosperity and peace, in which the mere mechanical action of the Government had surmounted every obstacle it had hitherto met, and in which the political philosophy of our wise ancestors had fallen into desuetude, and a race had grown up formed amid the discussion of the small administrative questions, and amid the competitions of professional politicians, for the petty honors and emoluments of office; that generations, like individuals, do not completely understand inherited wisdom until they have reproduced it in their own experience; and, finally, that I supposed we must travel through the whole cycle in order to learn what we ought to have known from the historic past.

The only mention I made of Mr. Lincoln was in illustrating this idea; and what I said was, that a man whose whole knowledge and experience of statesmanship was derived from one term in Congress, a long service in the county conventions at Sangamon, a career at *nisi prius* in the interior of Illinois, and some acquaintance with the lobby at Springfield, had now to deal with the greatest questions and most complicated forces of modern history.

I had met Mr. Lincoln before he was thought of for the Presidency, and have known much of him from his neighbors and friends. I have never been disposed to treat him so uncharitably as is often done by the factions into which his party is divided under the lead of Mr. Chase and Mr. Seward in his own Cabinet, which have scuffled over his body for power from the very day of his election, to the dissensions of which some of the vacillations of the Administration are to be ascribed, and to the occasional ascendency of the most dangerous of which, not only fatal mistakes of civil polity but most of our military disasters can be distinctly traced.

I am quite aware how difficult is the conduct of a constitutional opposition during a period of war; how necessary it is to guard against its degenerating into faction and to keep its measures directed to attaining the utmost practical good for the country at every varying stage of public affairs. I know also that such an opposition is often the only means of preserving civil liberty or of conducting an existing war to a successful termination. I have hitherto never failed to see the exact line between opposition and faction or to keep within it, with an impartiality at no moment shaken by interest, passion, prejudice, or association. I have not for an instant had out of mind the infinite advantages of using, if possible, those who now sway the Government, and must do so, though in a less degree, for two years longer, as the instruments of the national salvation.

It was only when I saw them yielding daily more and more to fatal influences that I looked around for a counterpoise in a

constitutional opposition. History affords no example of so liberal and generous — I might say prodigal — a support of an Administration by the mass of those who dissent from its policy and disapprove its management. How means more vast than were ever before placed at the disposal of an Administration have been employed, and with what results, I pronounce no judgment; I leave it to the testimonies daily coming to the public from those who were largely instrumental in bringing this Administration into existence. My view of duty on this subject has been purely and exclusively a matter of the judgment. As long ago as 1854, when I had broken all party ties by firm resistance to the repeal of the Missouri Compromise, Mr. Preston King told me that the politicians of the South would never forgive me, and asked me if I thought my name could pass the Senate of the United States. I answered that it was of very little consequence to me whether it could or not, but that it was of great consequence to me that I should do what I thought best for the country. The termination of an intercourse, during which he had persistently sought to engage me with himself in the work of forming the Republican party, was a letter of warning, in which I said, in substance, that everything that could be usefully or safely done to protect all the interests and rights of the North could be even better accomplished without the use of such a dangerous agency, and that such an organization would be either a political blunder, or it would be a political crime, in creating a conflict in which the Government would probably perish. This conviction, matured by long meditation in retirement and almost political isolation, governed my action ever after by a motive of patriotic duty so overwhelming that there was no room for any other motive.

When unexpected events swept us near to the fatal brink, this conviction was fully stated through the columns of the "Evening Post," in October, 1860, with the reasons of it, deduced from the nature of men and of parties, in the light of history and of the principles and practices of the great men who founded free government for this continent. I feel my

judgment of what was right and wise, and what is now right and wise for us to do, in this most important crisis of our national existence, assured by the accuracy with which, in that prevision, I estimated every element of the question; and though ready to accept with candor any new lights, I see, as yet, no reason to question my conclusions. If the "Evening Post," in the issue, from that time to the present, between its opinions and mine, can stand the same test, it may find some excuse for a dogmatic assault I shall not imitate, upon the opinions and motives of others not less conscientious and patriotic than itself, and, as private citizens, less exposed than it is to the misleading influences of the turbid current of partisanship and journalism.

S. J. TILDEN.

NEW YORK, Feb. 7, 1863.

XIX.

On the evening of the 17th of September, 1866, and in compliance with the request of the "National Union Convention" held in Philadelphia on the 14th of August, 1866, "the people of New York in favor of the maintenance of the Constitution and an immediate restoration of the Union of the States, who desire to forget the dissensions of the past, and restore peace to a distracted country, and who approve the open, manly, and patriotic course of Andrew Johnson in opposition to the illegal assumptions and usurpations of a partisan Congress," were invited to assemble in mass meeting in Union Square.

The object of this meeting was to sustain President Johnson in his efforts to restore to the Southern States — ten of which were still excluded from all share in the administration of public affairs — and to eight millions of the American people suffering from this humiliating proscription, all the rights and privileges guaranteed to them respectively by the Constitution.

John A. Dix, at the conclusion of a brief address on taking the chair, and before the remaining officers of the meeting were selected, introduced Mr. Tilden to the audience as chairman of the New York delegation to the Philadelphia Convention. Mr. Tilden then made the following brief address, in the nature of a report of the result of the deliberations of that body. The purpose of his speech was to impress upon the country the soundness of the doctrine upon which President Johnson had acted while Senator in 1861 and General Jackson in 1833, — that no State was competent to nullify the Union or to secede from it; that the States lately in insurrection, therefore, were not out of the Union, had not been out of the Union, and, peace and order having been restored, they could not, and should not, therefore, be longer denied their proportional representation in Congress.

In this view Mr. Tilden was faithful to the traditions of the elders. It was Mr. Van Buren, then Vice-President, who drew the Report of the committee of the Senate of the State of New York, of which committee Nathaniel P. Talmadge was chairman, in which report the whole subject of nullification and secession is reviewed, and the doctrine here enunciated by Mr. Tilden was proc[redacted] and vindicated.

SPEECH ON RESTORING REPRESENTATION IN CONGRESS TO THE SOUTHERN STATES.[1]

MR. CHAIRMAN AND FELLOW-CITIZENS, — Your committee of arrangements have called on me, as chairman of the delegation of the State of New York in the Philadelphia Convention, on the 14th of August, to make you an official report of the proceedings of that body. Even while the Convention was in session, intelligence of its doings passed by the lightning flashes of the telegraph to the remotest parts of our extended country. In the four weeks which have since elapsed, the wonderful journalism of our times, carried by our still more wonderful means of railroad communication, has spread every detail before our whole people.

To-day this vast concourse of citizens has assembled here to declare the almost unanimous approval, by the people of this metropolis, of the action of the National Union Convention to pronounce their almost unanimous judgment in favor of Andrew Johnson upon the great issue between him and the radical majority of Congress. The day chosen for this purpose is auspicious. It is the anniversary of the day — seventy-nine years ago — when the Constitution of the United States was adopted in Philadelphia. It is the anniversary of the day — four years ago — when, on the hard-fought, bloody field of Antietam, the army of the Republic, under the leadership of the gallant and accomplished McClellan, turned back the tide of invasion from the insurgent forces of Secessia. To-day the people

[1] Delivered in Union Square, New York, Sept. 17, 1866.

of New York, among whom the government of the Union was first set in motion in 1789, and who have always been devoted to its preservation, — national in position, in interests, in sentiments and sympathies, foremost in seeking to avert civil war by conciliation of all sections, foremost, when civil war came, in maintaining by force the Federal Union and the Federal Government, contributing to the national armies more men, and to the national treasury more money, than any other equal population of our country, — the people of New York, now that the civil war is ended, say, with one acclaim, "Let there be peace and fraternity throughout the land!" and they hail Andrew Johnson as the vindicator of the Constitution and the restorer of the Republic.

Fellow-citizens, why should we not, with one accord, stand by Andrew Johnson in the great contest which he is now making for the Constitution and for civil liberty? It is the same firm, hardy, courageous, indomitable man who yesterday stood by us, by the Union and the Government, alone among the Southern Senators, and almost alone in his own State. He confronted every danger to property, liberty, and life. He was hunted from his home into exile. But he never quailed, he never hesitated. He remained perfectly true to his principles of action. Now I hear it complained of that this same Andrew Johnson has the qualities which we yesterday were wont to applaud. I hear it complained of that his nature is not of the soft and silken texture which drifts along with the current, surrendering convictions, abandoning duty, seeking only ease, and acquiescing in every wrong which it may be inconvenient to resist. I hear it complained of that, having from the beginning of the civil war discarded all party, and thrown himself upon the people, he cannot, while traversing the country and daily meeting his fellow-citizens, suppress the irresistible impulse to declare to them his convictions on the great questions which he thinks involve the peace and harmony of the country. I hear it complained of that this heroic man, who has perilled more and sacrificed more for the

Constitution and the Union than any other man now living, when reviled and traduced, when even denounced as a traitor, feels and expresses something of indignation toward his assailants. Fellow-citizens, I thank God that Andrew Johnson is what he is, and not what his assailants wish him to be.

Do any, even of them, pretend that he is not a sincere, earnest, truthful, honest man? Does anybody doubt the purity and strength of his convictions? Does anybody doubt his patriotism and his devotion to the country? Fellow-citizens, I go farther. (I say that Andrew Johnson is to-day acting in perfect consistency with the principles on which he stood in resisting secession in 1860 and 1861 and afterward. I have this morning looked over his speeches during that period. I wish that time would allow me to quote from them the evidence of what I now assert. I go still farther. I say that the doctrine on which Andrew Johnson acted in 1861 in resisting secession, and on which he now acts in insisting that the ten States denied representation in Congress are still in the Union, and are lawfully entitled to representation as States of the Union, is the true constitutional doctrine.)

Fellow-citizens, I studied this whole question in 1833 during the controversy between the Federal Government and the State of South Carolina. If I ever studied any subject thoroughly and exhaustively, it was this question. I arrived at conclusions so clear and so completely thought out that I have never since felt a shadow of doubt rest upon them. Mr. Madison, the father of the Constitution of the United States, was then living. He participated largely in the discussions of that period. He brought to the subject complete knowledge of the views of the framers and of the contemporaneous history of the Constitution, a large political philosophy, and half a century of thought by his own great intellect. In my judgment, no man can claim to understand the Constitution or government of the United States who is not familiar with the writings of James Madison. In the discussions of that period it was completely established that Thomas Jefferson, the founder of the Democratic party, entirely

concurred with Mr. Madison in denying the right of any State to nullify the laws or to secede from the Union. Andrew Jackson was President, Martin Van Buren was Vice-President, Edward Livingston was Secretary of State, Silas Wright was a senator in Congress, William L. Marcy was Governor of this State. All of these great statesmen of New York — Van Buren, Livingston, Wright, and Marcy — shared in the discussions. They all repudiated nullification and secession, as did Jackson, Madison, and Jefferson. They did it on precisely the same theory of the Constitution on which Andrew Johnson did it in 1861; and that theory necessarily involves the conclusion, which Andrew Johnson asserts, that the States are all now in the Union. The Constitution of the United States is, by its own terms, declared to be perpetual. The government created by it acts, within the sphere of its powers, directly upon each individual citizen. No State is authorized, in any contingency, to suspend or obstruct that action, or to exempt any citizen from the obligation to obedience. Any pretended act of nullification or secession whereby such effect is attempted to be produced is absolutely void. The offence of the individual citizen violating the lawful authority of the United States is precisely the same as if no such pretended authority ever existed. On the other hand, the remedy given to the Federal Government against the individual citizen, being co-extensive with all the powers it may ever constitutionally exert, is in itself complete and adequate; and the idea that the General Government may exclude a State in its corporate capacity from the Union because of offences of individual citizens, for which there is a complete and adequate remedy against them, is totally unknown to our political system. The army itself was simply a gigantic *posse comitatus* to enforce the laws; and the moment resistance to them was suppressed, there revived the constitutional system of our fathers. The result of a war to enforce the Constitution and the laws made in pursuance of it, when prosecuted to complete success, could not be that one part of the country could govern the other on a principle which amounts to a revolution of the whole system. The

speeches of Andrew Johnson from December, 1860, are full of these sound constitutional ideas upon which he is now acting. On the 24th of July, 1861, he offered, in the Senate, the celebrated resolution declaring the objects of the war, —

"*Resolved*, That the present deplorable civil war has been forced upon the country by the disunionists of the Southern States now in revolt against the constitutional government and in arms around the Capitol; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted on our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purpose of authorizing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the States unimpaired; that as soon as these objects are accomplished the war ought to cease."

It was adopted by the Senate, — yeas, 30; nays, 5.[1]

On another occasion, in 1863, he declared: "Tennessee is not out of the Union, never has been, and never will be out. The bonds of the Constitution and the Federal power will always prevent that. This government is perpetual. Provision is made for reforming the government and amending the Constitution and admitting States into the Union, not for letting them out of it." (Fellow-citizens, on the issue between Andrew Johnson and the radical majority of Congress you cannot fail to render a verdict in his favor without striking down the vital principle of the Constitution and deeply imperilling the cause of free institutions and representative government all the world over.) Gentlemen, I have done.

[1] Yeas, — Messrs. Anthony, Browning, Chandler, Clark, Cowan, Dixon, Doolittle, Fessenden, Foote, Forbes, Grimes, Harlan, Harris, Howe, Johnson (Tennessee), Kennedy, King, Lane (Indiana), Lane (Kansas), Latham, Morrill, Nesmith, Pomeroy, Saulsbury, Sherman, Ten Eyck, Meade, Wilkinson, Willey, and Wilson, — 30. Nays, — Messrs. Breckinridge, Johnson (Missouri), Polk, Purcel, and Trumbull, — 5.

XX.

In the Convention called in 1867 to revise the Constitution of the State of New York a proposition was submitted and earnestly advocated for a very costly enlargement of the Erie Canal. Mr. Tilden, who was a delegate to the Convention from New York city, demonstrated, to the great surprise of his colleagues, the folly of enlarging the canal, by proving to their satisfaction, what till then did not seem to have crossed the minds of any of them, that the canal, properly cleaned out and worked, was more than sufficient for all the business that had yet offered, or was likely to offer, and that the enlargement would inevitably lead to an increase rather than to a decrease of the cost of transportation, and consequently to an ultimate diminution of business. His speech proved fatal to the scheme.

THE CANAL ENLARGEMENT FALLACY. — SPEECH IN THE NEW YORK CONSTITUTIONAL CONVENTION.[1]

MR. CHAIRMAN, — I owe an acknowledgment of the courtesy of the Convention by which I am allowed, by a resolution making a special exception to the rule now governing this Committee of the Whole, an additional half hour in which to lay before it such views as I have taken on the subject now pending, although the application for that indulgence was made without any previous consultation with me.

Sir, I find since I have been here, by the language which has been addressed to me, that I am esteemed by some members of this Convention to be a "railroad man." What may be the import of that language as applied to me, I know not. It is true that, chiefly in a professional capacity, I have, during the last ten or fifteen years, been very extensively connected with the railroad enterprises of the country, and particularly of the West. Indeed I might acknowledge that at some time during that period a large portion, perhaps more than half, of all such enterprises situated between the Hudson and the Missouri and north of the Ohio, have on some occasion stood to me in the relation of clientage. But those relations have been altogether too numerous and too diversified; they have too often called for advice on which to found action rather than to maintain controversy; they have too frequently existed at the same time with independent and even rival companies, or involved the consideration or adjustment of conflicting interests, to have cultivated the spirit of partisanship of any

[1] Sept. 11, 1867.

particular enterprise or class of enterprises which seems to be implied in the designation applied to me, or to have existed at all if I had been supposed likely to be deflected from the results of my own judgment in the advice sought from me by any connection, relation, association, or interest.

Sir, I stand here to-day to speak for the people of the State of New York. In fulfilling the trust which my constituents have committed to me, I know no other duty, and am wholly incapable of being influenced by any interest of my own or of anybody else. So far as I have any interest at all, so far as I might be affected by relations of friendship or association, it would be chiefly with those railroads which are tributaries, not rivals, to the Erie Canal. I have, therefore, no possible motive of prejudice against that work, no hostility to the interests it is designed to promote, but quite the contrary.

I admit the general unfitness of a State to manage enterprises of this description, or indeed to manage any kind of business: but the Erie Canal is a work *sui generis;* and in some sort, for the same reasons, so are the Oswego and the Champlain canals. It connects great navigable public waters of vast extent on the one side and on the other, and in some degree itself assumes the character of a quasi-public water.

The voyage from Europe since the discovery of the Gulf Stream, whether it be to New York, to Charleston, or to Savannah, strikes westwardly across the Atlantic Ocean close to Newfoundland, and then passes southward in the counter-current directly by the gates of New York. That capacious harbor is open at all seasons of the year, is easily accessible in all prevailing winds, and is land-locked, safe, and tranquil. From it you ascend the smooth waters of the Hudson, on which will ride the lightest hull with the largest cargo with which the skill of man has ever been able to navigate any waters. When you reach the head of navigation you have already passed the Blue Ridge, and are in that great gateway of travel and traffic opened up in the geographical configuration of this continent, —

the only place where the Alleghanies are cloven down to their base, and where travel and traffic are allowed to flow across them on a level; the natural pass of commerce connecting the navigable head-waters of the Hudson by the narrowest isthmus with the Great Lake system of the Northwest, and by the best grades (for there are grades in canals, as well as grades in railroads), with all that great system of inland communication and interior commerce, in its character and extent and accessories the most remarkable, perhaps, that exists on any part of the habitable globe. The railways — which are the creation of the last fifteen years, and now cover the Valley of the Upper Mississippi as with a close network, and are largely tributary to the Lake system — command that vast area of fertile soils, easily brought into cultivation by reason of the open prairies, admirably fitted to the use of agricultural machinery, and remarkably adapted to the cheap construction of railways, as, also, peculiarly dependent upon them, and now filled or being filled, by an active, intelligent, energetic population, trained in all the arts and industries of a high civilization, and applying those arts and industries to these vast areas of rich soils, acquired by the settlers almost without price, and brought by the Lake system and its easterly water connections and the railway system into immediate practical contact with the great centres of population, capital, commerce, and manufactures. Such a marvellous conjunction of all that civilization can attain, with all that Nature in her prodigality can give, even amid the social barbarism of an almost unoccupied wilderness, certainly has never before been seen in any experience of mankind.

I ventured in 1854, in a speech at the opening of the Rock Island Railroad, which first reached the Mississippi, as some twenty roads now do, to say that we would wrench the Father of Waters from his bed and make him pour his affluence of traffic into the harbor of New York. I ventured, in closing my speech on the questions relating to the canals in the Convention of 1846, to say that we would make New York the

carrier, the merchant, and the banker of the New World. Both of these predictions are already fulfilled.

Sir, it is these relations, which I have thus rapidly sketched, that, in my judgment, invest the Erie Canal in some degree with the character of a public water.

I am not one of those who think that we are at this time justified, as a matter of practical business judgment, in acting on the assumption that the Erie Canal is destined at any period which we can now foresee, to be superseded as an important and valuable servant of the public in the transportation of heavy freights. It is true that nearly all the improvements of the present time tend in the direction of enlarging the capacity of railways and no human wit can see precisely to what extent those improvements will go. That they will greatly advance, I have no manner of doubt. The railways have already nearly monopolized the carriage of valuable and of light merchandise; they have, for the time being, wrested almost wholly from the Erie Canal, and largely from the Lakes, the transportation of flour; they have nearly superseded many canals of inferior character or inferior situation, including many which were originally constructed as tributaries to the Erie or the Lakes; they have the advantage of working in winter as well as in summer, and thereby saving the accumulation of raw materials in the fall, and the accumulation of manufactured goods until spring; and they largely effect exchanges, even of agricultural products, which the producer or consumer is unwilling to delay for the opening of navigation. Wherever rapidity of transit or certainty of delivery is the controlling motive, — wherever there is a possibility of a quicker turn of capital at a profit, or a necessity of immediate conversion of property into money, — they are preferred. Traversing the whole country, touching every considerable place, going near to every producer and every consumer, they are a much more complete agency for the distribution and reception of produce than a water-communication which touches only a few principal points; and wherever property must take the rail to reach the water or

leave the water to reach its destination by rail or make both these changes, it is often found most convenient or cheapest to make the whole transit by rail. The achievements of the railways have been a succession of surprises to us all; and, so far, they have maintained all the advantages they have ever once acquired in their eager and daring competition with river and lake, which God has given us without tax or toll. Such a result may well suggest to us a prudent caution.

But let it not lead us into anticipations which are exaggerated, or inapplicable to the particular case. We have to act upon the questions now before us in a practical sense, — not on speculative or conjectural opinions of the future, but on the basis of ascertained experience. I think that to-day we are not justified in acting upon the assumption that such a mode of communication as now exists by means of the Erie Canal, with its peculiar characteristics and in its peculiar situation, is to be superseded.

I have alluded to the grades of the Erie Canal. You have only to look upon a map such as the State Engineer attaches to his Annual Report, to see the Chenango and the Black River and the Genesee Valley, climbing as by many successive steps over the heights by which they reach their interior termini, where they find as they find in their courses to those termini, no sources of other than merely local business, — and then to look at the Erie Canal with its level grades, and its position between the great navigable waters of this continent, — to see why it is that while the former have been generally unremunerative, the Erie has remained, as it probably will remain in the future, an instrument of great power and great value.

In my judgment it is the policy of the State to preserve, protect, and improve it, and not to contemplate, in our present experience of such affairs, any probability of abandoning it.

The State undertook this work for a public object. It did so simply because private enterprise, individual capital, could not,

at the time, accomplish that object. It was, therefore, in consonance with the theory of its former action that the State in 1851 allowed the transit of property upon the railway situated along the side of the canal. For the State to have undertaken this work because there was a controlling object in creating a facile and cheap transit demanded by the necessities of the million, not otherwise attainable, and then to have managed it in the narrow and jealous spirit of monopoly, — for the State to use the sovereign power of legislation for the purpose of oppressing or destroying a new method of attaining the same object, so beneficent to the people, and all the better that it sprang from private enterprise and could serve the public with more skill, — would have been to forget the motive and purpose for which the State originally acted, and its duty and trust as a representative of the million, and to remember only its selfish interests in its character as a proprietor. I therefore concurred in the policy of this State in 1851, which, by repealing all restraints, whether by prohibition or discriminating taxes on the carriage of property by railway through the State, opened up to free competition every mode of transit for the products of the West and for the manufactures and merchandise of the East.

I do not think there is any just ground for the jealousy which appears to be felt in some quarters toward the railway system of the country. It certainly has served the public with great efficiency and with incalculable utility. A new mode of intercommunication, whereby the products of different soils and climates and capacities of supplying human wants are more rapidly or cheaply interchanged, adds as much to the productiveness of human industry as increased geniality of the climate or increased fertility of the soil. The Convention of 1846, by provisions which it fell to my lot to report, provided, — first, in favor of a system of incorporation under general laws; and secondly, for a supervisory legislative control over the chartered power and privileges of all corporate bodies.

In my judgment, those two provisions were and are perfectly adequate to secure every public object, however freely we may grant to private enterprise all the powers necessary to enable it to create these great machines of travel and transportation, and to the management of them by corporate bodies, which can serve the public with more skill and economy than the State can. The authority thus reserved to the State is doubtless capable of being perverted by it to private injury and oppression; but it seemed to be necessary to the public safety, and is a trust to be exercised with wisdom and justice.

Sir, experience has shown that the tendency thus far of these railways has been, not to overcharge the public, but rather, through excessive competition among themselves, to serve it more cheaply than they could afford. They do not now, taking the country together, reserve to their stockholders and for their bondholders much, if anything, over 25 per cent of the cost of carriage to the public; while upon the canal, in the average of years, the State reserves 50 per cent. Their economies and their skill have been at the service of the public, and have been eminently successful in working out the grand results which are the object of their creation.

This brings me to refer — not in any particular order, because while I have endeavored for the last few weeks, during some failure of health, to study the questions as to the canals with all the care I was able, I have not had time to arrange my ideas in any methodical manner, and perhaps shall not be able to present them artistically; but I design, during the time allotted to me, to converse familiarly and freely with this body on the topics under consideration — this brings me to the general policy of taxation of the right of transit. I was adverse to such a policy in 1846, agreeing with Mr. Hoffman on that subject, as is indicated in some passages in the recorded debates, — although the chief part I took in that discussion was not reported, for I had neither the leisure nor the temper to report it myself. I concurred entirely in the general view of the inexpediency of taxing the right of way. I asserted the doctrine

that the canal ought to be considered as a trust, from which the State should receive back simply what it had advanced for construction and maintenance, and that it should employ the surplus, if a surplus should arise, for the improvement of the canal and for the cheapening of the service it renders to the people. I hold that doctrine now. I regard the condition of taxation to which we have in our time arrived in respect to the railway system as a very serious error, calculated to lead to very injurious results to the public.

Mr. HATCH: The gentleman has referred to Mr. Hoffman. I have here an extract from the debate in the Convention of 1846, which I desire to read, in which he says: —

"Neither in form nor substance do I accede to the doctrine that the canal tolls shall be taken for general purposes. I deny it. The right of way is the right of the million. The sovereign holds it in trust, and can exercise it only for their benefit, and has no right to make a revenue out of it. Such a course must engender the worst oppression and the worst corruptions, and soon realize the worst vices of the worst governments, — taxation on all we consume, which will allow nothing to go to or from the markets without tribute to the State."

I desire to know if the gentleman concurs with those views.

In those general views I concur now as I did then. To-day the direct taxation upon the railways of the country, if I may judge from the cases which have come under my observation, is not less than about 5 per cent of their gross earnings, and well toward 20 per cent of their net earnings; while the indirect taxation upon them is about three times that amount: and the people of this country ought to know that whenever they pay a dollar for any transportation or for travel, not less than twenty or twenty-five cents of that dollar is, not the cost of the service they receive, but taxation unduly imposed on such subjects in our time. If one half of the net earnings of the railways goes to their creditors, the bondholders, then not more than 12½ or 15 per cent of their gross earnings are received by the proprietors of these great works, — the stockholders. This includes all interest on the investments of the

proprietary class, and all indemnity for the risks incident to their enterprises, and all compensations for a supervisory attention to their administration. It is a startling fact that, to a much larger extent than all which these useful servants of the public pay to their owners, they collect for the Government by direct and indirect taxation. You would truly describe their leading characteristic if you should say that, in respect to their net results, they are chiefly agents of the Government to levy taxes upon the people; that while achieving such marvellous results as we witness in our day in enhancing the proceeds of human industry, in facilitating travel and commerce, in quickening all the springs of social prosperity and individual happiness, these useful servants of the public exist more for the Government than for the owners whose enterprise has created them. I cannot, however, but deem such a mode and degree of taxation as most mischievous. In a condition of general low prices for agricultural productions, it would probably be impracticable.

I intend now, very briefly, because the subject has been already much discussed, to refer to the capacity of the Erie Canal to bring down an aggregate tonnage.

In this connection I wish to call the attention of the Convention to this distinction, — Capacity to do an aggregate business within a given time depends upon the facility and rapidity of the locks in the passage of boats; economy of transportation depends chiefly upon the condition and availability of the water-way of the canal.

In the ordinary course of use of a canal, the boat moves along through its water prism, if the work be well constructed, without any special cause of retardation; and there is no reason why the Erie Canal, for instance, could not pass five or ten times the number of boats it has ever done, the prism being in good order, except the difficulty of getting all those boats through the locks. It is, therefore, the power of lockage which is the test of its capacity to transmit a given number of tons in a day, a month, or during a navigable season.

Now in the Erie Canal, with its present locks, how many boats, how many cargoes, what aggregate tonnage during a day, a month, a season of navigation, is it capable of passing? I have here the original Report, in 1835, of the engineers on which the enlargement was undertaken. Mr. J. B. Jervis — the father of the skilful and admirable engineering science which governed the plans of the enlargement and made it about the best work of the kind which exists — stated that the capacity of the Erie Canal would be enlarged threefold in one set of locks; that comparing single locks upon the old canal with single locks upon the enlarged canal, the capacity of the canal would be increased threefold.[1] Mr. Ruggles, when he was canal commissioner in 1838, estimated that the enlargement would increase the capacity of the Erie Canal to sevenfold that which then existed, and asserted that "it will furnish the means of convenient transit for not less than ten millions of tons annually!"[2] Mr. Seymour, the State engineer in 1851, when the Nine Million Bill was passed in order to obtain an earlier completion of the enlargement, made an estimate which was very large, but it is so indistinct in its data that I will not refer to it. Mr. McAlpine, in his celebrated Report of 1853, and again in 1854, stated the capacity of the enlarged canal to be seven millions of tons per annum; at the same time stating the capacity of the original Erie Canal to be a million and a half. Mr. Richmond, the late State engineer, made an estimate which has already, I believe, been laid before you in the very able argument of my friend the Chairman of the Committee on Finance [Mr. Church]. He computed in 1861 that a lockage once in eight minutes, or if the locks were doubled, once in sixteen minutes by each of the pair, would enable the Erie to deliver at tide-water 5,220,000 tons, or about double what it did last year.[3] The chairman also referred to the estimate of Mr. Goodsell, the present State engineer; but

[1] Assembly Document No. 254, for 1835, p. 17.
[2] Assembly Document for 1838, No. 242, p. 17.
[3] See Assembly Document for 1862, No. 8, p. 33; also No. 28 for 1861.

I believe some question arose as to the authenticity of that estimate, or Mr. Goodsell's responsibility for it. The estimate he [Mr. Church] referred to was appended to the Report of the Canal Commissioner, Mr. Bruce, in 1866. In looking over the reports of the canal commissioners, which I did during my illness some weeks ago, I found an estimate, under the authority of Mr. Goodsell, appended to the Report of the Canal Commissioners in 1860. I have it here, but the time will not allow me to read it. Suffice it to say that it makes the capacity of the Erie Canal, for an aggregate tonnage, up and down, over eighteen million tons, provided the tonnage were equal both ways; that is, something like 9,266,000 tons of descending tonnage. It is founded on an allowance of seven and a half minutes for each lockage. It will be found on Assembly Document No. 51 for 1860, p. 20.

Such, sir, were the representations under which the State acted in undertaking the enlargement in 1846, and all through its progress, for a quarter of a century, until 1860. They were concurred in by all the friends of the enlargement, at all times and on all occasions.

And yet we are now told they were totally fallacious. We are now told that while we expended twenty-five or thirty years, and more than that number of millions of dollars, to enlarge the Erie Canal, mainly to increase its capacity, we have totally failed in that respect; that while we have increased the cargo of the boat to three times its former size, it now takes three times as long to pass the increased cargo through a lock; that it does so necessarily and inevitably; that the whole net result is that we can get no more tons through the locks in a day, in a month, or in a navigation season, than we could in the old unenlarged canal. The fingers on the dial-plate of Time are set back thirty years, and we are to begin anew just where we started in 1835. And then, on the basis of such an alleged failure, such an alleged blunder in all our previous calculations, we are to be rushed into a fresh enlargement for the purpose of increasing the capacity of the

Erie Canal; and we are to begin the new adventure by pulling down all our double locks, — splendid and costly structures, — and putting single locks of double the length in their places.

Mr. Jervis, in the letter to which I have referred, denies, and I have no doubt with perfect truth, that the Erie Canal enlargement has been such a melancholy failure.

Sir, it becomes important to ascertain what ought to be the time consumed in the lockage of a boat. In the allotment of duties in 1846 between Mr. Hoffman and myself, it fell to me to make the investigations which related to the general capacity of the canal and the power of the locks to pass the boats. I furnished some of the tables on that subject, and also some of the tables which are now habitually continued in the Annual Reports of the Auditor. I ranged rapidly through a fearful library of documents relating to the canals to find whatever information they contained on these subjects. In the early days of the Erie Canal it was supposed to take from twelve to fourteen minutes to pass a boat through a lock. When in 1835 the enlargement was undertaken, the maximum power of the locks was supposed to be to pass a boat in about ten minutes. In 1841 the canal commissioners, Mr. Ruggles and others, estimated it to be to pass a boat in a little over seven minutes. This was when they were urging the speedy completion of the enlargement not only as "a measure of fiscal and commercial expediency, but of immediate and vital necessity." They said that "there was a fixed and absolute quantity,—to wit, two hundred and twenty-five thousand tons,— which, if added to the descending tonnage — then 467,315 tons — would exhaust the remaining capacity of the canal," and that "any further increase of the trade must seek another channel." In 1842 the commissioners repeated this estimate, and said that experience had established its correctness. In 1843, after Mr. Flagg had resumed the administration of the finances, the locks at various points were watched and timed for the same consecutive twenty-four hours, and they

were found to pass the boats in from four to six minutes each.

This result was obtained partly by improvements in the valves of the lock-gates, which enabled the locks to be filled and emptied more rapidly, and partly by more efficient working of the locks; and neither of these expedients had been exhausted. Mr. Flagg found that the canal had been allowed gradually, by the deposit of wash from its sides, to fill up to the extent of at least a foot. In a celebrated Report of the Canal Board in 1840, supposed to be written by Mr. Spencer, I find it announced that the water in the Erie Canal available for navigation was but three feet. In 1841, when the leading members of the Canal Board, with their eyes in the clouds, were entirely overlooking all those practical methods that would make the Erie Canal efficient, they were compelled to enact a restriction that no boat should draw more than three feet of water. When Mr. Flagg came in he began bottoming out the canal and throwing the wash which had accumulated there upon the banks. He manned the locks efficiently, and during the most busy season of the year he double-manned them. The result was that, during the year of the Convention, the Erie Canal, with many of its locks unenlarged and single, did an aggregate tonnage of 1,107,270 tons; and in the following year, when the great foreign demand for breadstuffs consequent upon the famine in Ireland swelled its business, its tonnage reached 1,431,250 tons,—all done through locks such as those at Frankfort and Fort Plain, old single locks, built with the canal and unenlarged. Mr. Flagg, by that judicious expenditure of about three hundred thousand dollars, and by these judicious methods, increased the capacity of the canal so as to enable it to accommodate an additional tonnage more than four times the increase which the canal commissioners in 1841 said would bring the business absolutely to a standstill by complete exhaustion of the capacity of the canal; and the business was better accommodated, and the round trip of the boat quickened from twenty-two to eighteen days.

Such a result excited much surprise; and in 1846 the allegation, almost in the language of complaint, was very rife that Mr. Flagg had enlarged the Erie Canal under the head of ordinary repairs, or it could not do the astonishing amount of business that passed over it. The Committee on Finance in that Convention resolved to obtain thorough information on that subject. So during the session of the Convention we had the canal sounded every four rods on both sides of the boat from Albany to Buffalo, and the depth of water measured on the upper and lower mitre-sill of every lock; and the capacity of the locks for passing boats tested by actual experiment at all the points where it was deemed necessary. Sworn returns were made before the committee, and were accessible to any member of the Convention who chose to look at them. It turned out that the canal had attained only an honest four feet of water and an efficient administration; though its capacity had been enlarged from the six hundred and sixty-seven thousand tons and the two hundred and twenty-five thousand additional which was to close its business and drive the trade to other channels, to well toward a million and a half, with many locks yet single.

In looking among the papers of the Canal Department at that time I found manuscript records of the experiments made in 1843 of the time which it took to lock through a boat; and my attention was particularly called to these experiments at Alexander's lock, three miles above Schenectady, which, in the throat of the canal, passes all the tonnage that concentrates for tide-water. I observed that for half an hour at a time that lock passed boats at the rate of three and a half minutes each. I asked Mr. Bissell, who was then one of the canal commissioners, to send down the superintendent of that lock. He was good enough to do so; and it was ascertained that the lock had not yet been improved in the valves or paddle-gates through which the water is allowed to fill and to empty the locks. Originally these valves were one in each leaf of the lock-gate. There had been very little attention paid to that

subject, but it is perfectly obvious that by putting in two you can diminish by one half the time required to let the water in and let it out. The superintendent, at my request, put another valve in each of the leaves of the gate at one end of the lock, and reported a gain of twenty seconds. The other experiments proved that the locks would pass boats ordinarily in four to six minutes, — with great diligence, rather in four than in six. I have taken from the Auditor's Report of 1847 some statements on that subject. The lock at Fort Plain — an old single lock — on June 25, 1847, passed 304 boats. The same lock on June 14, 1848, passed 340 boats. The time taken was four and three quarters minutes in the first instance, and a little less than four and one quarter minutes in the second, during the entire twenty-four hours, and making no allowance for the intervals in which there were no boats ready. On June 26, 1847, the Frankfort lock, also an old single lock, passed 264 boats; and on May 13, 1848, the Frankfort lock passed 311 boats: in the latter case at the rate of one boat every four and eight tenths minutes during the entire twenty-four hours, without allowing anything for intervals between the arrivals of boats. In 1847 the Fort Plain lock passed, for a whole month, boats at the rate of 223 each day, and in 1848 the Frankfort lock for a whole month passed boats at the rate of 206 each day. In 1847 the daily average for the whole season at the Fort Plain lock was 209, and at the Frankfort lock 193.

Mr. HATCH: What was the tonnage of the boats?

An average of sixty-seven tons in 1847; in 1848, seventy-one tons. These locks are stated in the official reports of both years to be old single locks.

A MEMBER: May I inquire what is the lift of the locks?

I do not remember at this moment. Sir, it is a matter of engineering skill and business experience to make the locks — by practical improvements in them, in their construction and machinery, in the convenience of their approaches, and above all by a good administration and a proper police over

the boats — efficient in doing their work, and thus to accomplish, almost without cost, as much as could be obtained by an extensive change in the essential plan of the canal, involving many uncertainties and hazards, and creating great inconvenience in the navigation during all the process of change.

History repeats itself; and what the Erie Canal now wants more than anything else is a better water-way, by giving it the honest seven feet which the navigator is entitled to, — instead of the six feet which the transporters say they have got, and which your engineers admit is about all you give, — and then making and keeping the locks as perfect as you can, and the gates in good repair, in order to work your machine as efficiently as possible. It is an enlargement of the capacity of the men who administer the canal which is now wanted, and not an enlargement of the capacity of the canal.

Now as to the additional time that ought to be taken in passing the locks of the present enlarged canal, as compared with those of the former canal, I have a letter from Mr. Jervis, which I cannot read, because the reading will consume so much of my time, but will submit it to the Convention. I observe that he estimates that it ought to take about one fourth more time on the enlarged canal to pass a boat than upon the old Erie Canal. I observe that Mr. McAlpine, in his testimony before the Canal Committee, states that it would require a fourth or a third more time upon the "gunboat canal," as I will call it for convenience, to pass a lock than on the present enlarged canal. I presume that if the canal is in good order, it is capable, or ought to be made capable, of passing boats, not once in three minutes, but say once in five on the old canal, and on the present canal once in about seven minutes. If that cannot be done, the causes of the failure ought to be carefully investigated, with a view to apply the proper remedy. I have passed through locks on Pennsylvania canals, timing them as I went, in three minutes, on the Delaware Division and on the Lehigh Canal. It is, or ought to be, only a matter of detail to secure what the engineers have all considered to be reasonable

results, if the locks are well constructed and well administered. The paddle-gates, being adapted to admit the water to the lock and to allow it to escape, will operate as quickly for the large boat as for the small. There is simply a little time lost in handling, and particularly in starting the boat to go out of the lock when in a state of rest. It is simply that additional time for which you need to make allowance. At any rate, I am for a thorough investigation and a complete test by experience before I admit that all former calculations in this respect have been an illusion.

I desire now to call the attention of the committee to a circumstance of some importance. The Erie Canal in all its locks except five — the lock at Port Byron, the lock at Jordan, and three at Syracuse — locks downward toward tide-water. Eighty per cent of your tonnage in 1835, and generally since, and sometimes much more than that, is descending, and not more than 20 per cent, and sometimes not more than 15 per cent ascending tonnage. A boat comes down fully laden, drawing six feet of water, and returns drawing ordinarily not more than a foot or eighteen inches. The current is all down toward tide-water, except in those five locks, three of which are at Syracuse, all of which are between Montezuma and Lodi, a little east of Syracuse. The boat comes down with the current, and, especially if the lower gates of the lock leak, it passes rapidly into the lock, even though it draws six feet of water; and the boat that returns floats along on the top of the water without inconvenience. Now it so happens that in these five locks vastly more inconvenience is found than anywhere else. Some inconvenience, no doubt, is felt, but in my opinion it is greatly exaggerated. I have some statistics as to the lockages at Syracuse, but I do not intend to refer to them, particularly as that matter has been already discussed by a distinguished Member from Onondaga [Mr. Andrews], though I was not so fortunate as to be present and hear that part of his speech. I do not think any very serious practical inconvenience has been, so far, experienced. Some inconvenience has been felt

undoubtedly. It was an error of the original engineering that those five locks were not made a few feet deeper, and perhaps somewhat wider, than the other locks, for the purpose of enabling the water to pass out of the lock with ease when displaced by the boat, as the loaded boat — loaded down to six feet draught — enters the lock. This is, however, a mere local difficulty. Whenever the business of the Erie Canal increases to a degree at which serious inconvenience shall be felt at these five locks, or any of them, several expedients which have been proposed may be resorted to. It has been proposed to make a second tow-path on the berme-bank. Another suggestion of a good engineer is to place small stationary engines to haul the boat more conveniently and more rapidly into these locks. These expedients would involve but very small expense. You might construct at these five locks another tier, making them, if you please, deeper, and possibly a little wider, and use your present and these also; or you might alter these locks so as to remove whatever inconvenience may be felt whenever that inconvenience becomes sufficient to render such a measure necessary. It was one of those five locks which Mr. Prosser took out his special sub-committee to see; but I do not find the important truth anywhere mentioned in the report of their examination that the same difficulty was not found anywhere else.

No doubt the capacity of the canal is limited by the worst locks upon it; but it does not at all follow that the worst locks may not be improved, made a great deal better, or even very good, if not equal to the best; and in that consists, in my judgment, the fallacy of the examination and the fallacy of the conclusions arrived at by the special sub-committee of the Canal Committee who went to visit and inspect those locks. The fallacy is that these five specimen bricks have no other bricks like them in the whole edifice, and they may be changed without affecting the edifice. My friend the eminent physician from Broome [Mr. Hand], would scarcely act upon the general system of one of his patients because of some local disease to

which a topical remedy would be certain, complete, and effectual. If at any time it becomes necessary to improve these five locks, or if it is now necessary — improve them.

But I beg this Convention to understand what is the real situation of things, and how entirely illusory and deceptive the idea is that because inconveniences may exist now or hereafter in the special case of these five locks out of the seventy-one, we are to pull down all the expensive structures of the Erie Canal which we have been thirty years in erecting, and which have cost a large share of the thirty-two millions we have expended upon that work, — that we are to pull them down, from one end of the canal to the other, and build new structures, without much knowledge, without any accurate or trustworthy knowledge, almost without inquiry, by an edict of this Convention foreclosing all future investigation or consideration, — an edict incorporated into the fundamental law of the State!

One word on the subject of the irregularity of the business which comes upon the Erie Canal. That is greatly exaggerated. Gentlemen will find in the Auditor's Report every year two tables. One shows the lockages for that year at various points, by the months separately stated, and the other shows the monthly lockages at Alexander's, just above Schenectady, for the whole period the canal has been in operation, — now thirty-three years. Any gentleman who will look at these tables can see to what extent this alleged irregularity exists, and what are its limits.

The first of these tables, for 1866, shows the lockages at the guard lock at Black Rock, which is the first east of Buffalo, as follows: —

May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Total.
2,141	2,825	2,762	3,070	3,074	2,844	2,336	155	19,207

The last page of the other table embraces the period when the export of breadstuffs was largest. It is as follows: —

STATEMENT No. 40.

EXTRACT FROM LOCKAGES AT ALEXANDER'S.

Year	1861.	1862.	1863.	1864.	1865.	1866.	
Commencement of each season.	May 1	May 1	May 1	Apr. 30	May 1	May 1	Total.
Close of each season	Dec. 10	Dec. 10	Dec. 12	Dec. 8	Dec. 12	Dec. 12	33 Years. 1824–1866
Number of days in each season	224	224	222	223	226	226	
March	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	21
April	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	24,424
May	3,716	4,392	4,596	3,235	1,864	2,710	152,517
June	4,101	5,061	5,092	4,430	2,803	3,124	161,300
July	3,822	5,376	4,083	2,985	3,819	4,637	154,571
August	3,781	4,635	4,409	5,237	4,437	5,104	146,789
September . . .	4,349	5,260	3,441	4,205	3,886	4,568	153,966
October	5,386	5,247	3,915	4,597	4,283	4,607	183,041
November . . .	5,925	4,517	4,166	3,685	4,454	3,990	159,496
December . . .	99	489	369	368	491	1,142	9,777
Total	31,179	34,977	30,071	28,742	26,037	29,882	1,145,954

Corn, which last year formed about 30 per cent of the down-through tonnage of the Erie Canal, is generally shelled in the winter. It comes into Chicago in the early spring, and it comes upon the Erie Canal largely in the spring and summer months. Wheat comes, in a larger proportion, in the fall. Lumber, which is about 30 per cent of the tonnage of the Erie Canal, prefers as much as possible the summer months. I have looked over the monthly shipments by lake as given in the annual trade reports of Chicago and Milwaukee, and they illustrate how much the statements made before the Canal Committee are exaggerated.

Of course business does not distribute itself with absolute equality during the summer; but before it reaches the Erie

Canal it has gone through two distributing agencies. The railroads, which bring it to the lake ports, have not an unlimited equipment, and the vessels which are kept upon the Lakes cannot be multiplied or their capacity expanded indefinitely or suddenly. When the business has passed through these two distributing and equalizing agencies, and reached the Erie Canal, it does not find an indefinite equipment upon the canal of boats, horses, and crews.

When it happens that you have large crops, and also at the same time a sudden and great foreign demand for breadstuffs, from a famine or from a war, then all the means of transportation of every kind are pressed to their utmost. The natural relief is for prices to rise, and the surplus business to overflow into inferior channels, if such can be found.

At such times more difficulty is often felt upon the Lakes than upon the Erie Canal. I remember that in 1863, while I was professionally employed in the city of New York in a very important litigation concerning a canal, an eminent gentleman from Chicago who called on me complained of the want of capacity on the Erie Canal. On a little inquiry I found that freights were then relatively higher on the Lakes than on the canal, and asked him if it would not be best to *enlarge* the Lakes.

I have looked over the weekly and monthly averages of lake freights and canal freights for the last six years contained in the various reports of the auditor, and such as I can find in the Chicago trade reports for the last ten years; and without having had time to make an exact computation, the general impression on my mind is that the fluctuations in freights were more extreme upon the Lakes than upon the Erie Canal.

At such times, too, the real difficulty is in getting boats rather than in getting boats through the locks. No man can afford to keep vessels enough upon the Lakes or boats enough upon the canals to supply all the demands which may be created by famine or war in Europe; or even to do a disproportionate share of the business of a season in a small part of that

season. Fluctuations will happen, and to some extent may be provided for, and distribution to some extent must be enforced; the adjustment is a matter of practical business judgment. I have had frequent occasions to act on similar questions, and have generally favored a full equipment, — in one instance for a railroad, on the ground that it was enough to show a reasonable certainty that the additional equipments would be in use eight months of the year. I think the Erie Canal ought to have, and be kept with, a surplus capacity of reasonable extent; but it is neither prudent nor possible to provide for extreme cases, or to satisfy the views of those who indulge in such gross exaggerations as some of the witnesses before the Canal Committee, who think that two thirds of the business of the Erie Canal is, or ought to be, or could be done in one third of the season, or who ascribe to its want of capacity the rise in the prices of transportation which happened in those instances, even more on the Lakes than on the canal, from causes which, for a short time, over-taxed the equipment of both.

Sir, what the Erie Canal now requires in respect to its locks is, — first, efficiency of management; second, a good condition of repair, especially of the gates; third, that the five locks at Port Byron, Jordan, and Syracuse, by which the loaded boat ascends on its way to tide-water, be thoroughly examined, and their power to pass the loaded boats tested by actual experiments, under the supervision of the most practical and trustworthy engineers, and if it be found necessary, or likely to become necessary, to improve them and give them greater power, that the best plan for that purpose may be devised and carried into seasonable execution; fourth, that the condition of the locks generally be, in like manner, examined and tested, for the purpose of ascertaining whether there are any defects in their condition or working which impairs their efficiency, and, if so, what are the causes and what are the remedies proper to be applied, and, in this connection, whether there is any fault in the police exercised over the boats, whereby some are allowed

to become obstructions to others in the navigation; fifth, that the question of doubling the locks — thirteen in number, I think, between Montezuma and Rochester — which are now single, should be duly considered, and that as soon as shall be practically necessary, that improvement should be made.

I notice that one of these locks — the Brighton lock, east of Rochester, which is represented in some of the annual tables of lockages in the Auditor's Report — makes about two thirds as many as Alexander's. In the Report of 1861 it is stated as making two hundred and forty-three lockages in one day. In 1862 it made twenty-four thousand five hundred and ninety-seven during the season. If these thirteen single locks can get along comfortably, there must be considerable surplus capacity in all such of the double locks east of them as are equal to these in construction and situation.

Further on in the future, if the Erie Canal shall continue to grow in East-bound business, other questions will arise. But in the meantime, if you take care of it, I cannot see how it can exhaust the capacity it will possess, without having paid largely of the debt the State now owes on its account, and — if you are not compelled much to reduce the tolls — without having furnished ample surplus for these and other improvements.

If at length, years hence, it shall need a more extensive enlargement of its capacity, you will still find yourself able to accomplish that object without changing the fundamental character of the work. You may consider whether you will construct a third line of locks, first in the part of the canal east of Syracuse, and afterward throughout, or whether you will double the length of one tier of the locks, adapting them to pass two boats, like the present.

I speak now merely of the question of capacity, and not of any change in the form of the boat which you may make for other reasons. If you wish to lengthen the boat, you might do so to more than one hundred and fifty feet, and still be in the same proportion to the present width of seventeen and a half feet, which the proposed two-hundred feet boat would bear

to its proposed width of twenty-three feet. I am not recommending any such project; I am only saying that if you decide to go for length, you had better pause a little to consider whether you cannot make your present double tier of locks available before you pull down these excellent and costly structures. Mr. Welch, of the Delaware and Raritan, told me the other day that he would not recommend boats more than eighteen feet in width, and yours are now seventeen and a half. But you need not and ought not to change the form of your boat, in our present state of knowledge on the subject, merely to get a greater annual aggregate of tonnage, merely to get more capacity for the canal. You should change it only because the new boat would be a boat of more useful and economical service, and because it would be a better instrument of transportation, and after counting the cost of the advantage you expect to secure, and seeing that the gain is worth the cost. You will have ample time to consider that subject, to test every plan by experience, and to know more of the future of all questions concerning transportation, before you will be forced to act. The questions to which I have adverted are of great complexity. I do not to-day assume to adjudge them. They can be determined only by careful examination and practical experience. Wise engineers can work out the results that will be most useful and least costly. We have not arrived at these questions yet. When we do arrive at them, let us treat them practically, like men of sense and judgment, — men with a trust to perform in the disposition of the public money and the care of the public property.

I now wish to make a few observations upon the subject of economy of transportation, and I am not aware how much of my time is gone.

The CHAIRMAN: The gentleman has thirty minutes yet.

Economy of transportation — economy per ton per mile, — depends upon the water-way. Ninety-five per cent of all the time consumed in the transit on the Erie Canal, assuming that

the water-way and the locks are in equally good relative condition, would be consumed in passing over the water-way at, say, two miles an hour, and but 5 per cent in passing the seventy-one locks at, say, seven and a half minutes each. That is a fair proportion. If you want economy of transportation you will attain it by making the water-way good, by making it the best that the case admits of; but you cannot gain it by shortening the time of passing through the locks. If you should shorten the time of the lockages to five minutes each, you would gain less than three hours in the whole transit from Buffalo to Albany. If you should allow each lockage to consume ten minutes, you would lose less than three hours in the whole transit of three hundred and fifty miles. If you would save time in the whole voyage, you must save it in that part of the service which consumes 95 per cent of the whole voyage, and not in that part of the service which consumes but 5 per cent of the whole time of the voyage. By quickening the lockages you will obtain a greater aggregate capacity. Capacity depends upon the locks, and economy depends upon the water-way.

The law that governs all economy in machinery is, — first, that you have a machine with the best adaptation to the service which you seek to get out of it, the highest amount of adaptation which can be secured in every part of the machine collectively, the highest aggregate which can be formed in combination; secondly, that then you use that machine to the highest capacity of which it is capable. These are the two elements that constitute economy in the use of machinery, and form the law that governs all machinery.

There is no more utter fallacy than the idea that a large boat is of necessity any more economical than a small one. It is under certain conditions; without these conditions it is not. Even upon the Atlantic Ocean you may make a "Great Eastern" or a "Great Republic," ships which are not fit for use, which are worthless by reason of their excessive size, and which are never capable of returning anything to their owners. On the Lakes

generally they have not reached the maximum of economy in transportation to be attained in the construction of vessels. I do not think they have on Lake Erie. Vessels have gradually grown to their present size, and I think they tend to still larger dimensions. But there you have an unlimited water-way.

The three elements of cost in the canal transportation business are the cost of towing, the cost of manning, and the cost of the use of the boat; and on all canals these elements are from 25 to 40 per cent each, varying under different circumstances. It would not be much out of the way to put each of them at one third, though the use of the boat is apt to be more, and the manning less. The towage was calculated in 1835 at 40 per cent; it was about the same in 1846. It is probably a little less now, when it is done by towing companies at thirty-five cents a mile; and some of the boatmen, furnishing their own horses, count it not more than 30 per cent.

Economy depends much upon the time of your transit over the canal. As you quicken your transit, shorten the time for carrying to their destination a given number of tons, you lessen every element of the cost of the service; you enlarge the number of tons carried in a given time; and, by enlarging the divisor, you reduce the rate of cost per ton per mile.

In canal navigation you have two fundamental conditions,— first, that you have to experience the resistance of water, and not the resistance of air, as by a railway train; second, that the water is not an unlimited expanse, as the ocean or the Lakes, but in a narrow channel, where it is impossible to move except at a very moderate speed, impossible to move with economy except at a very slow speed. You must respect these conditions if you expect to do an economical business.

Why is it that if you had the Erie Canal fourteen feet deep and a hundred feet wide, you would never bring a lake vessel upon it for the mere purpose of transporting property? It is, — first, because your lake vessel and your canal-boat, being of different forms, the canal-boat would carry 35 to 40 per cent more cargo out of the aggregate weight of vessel and

cargo, and you would have to draw three or four times as much dead weight, in proportion to cargo, in your lake vessel as you do in your canal-boat; and second, that your lake vessel costs about three times as much as a canal-boat per ton of capacity. You would employ a much more expensive instrument, and get much less service. I say nothing of another failure in adaptation, — the shape of your lake vessel compared with the shape of your locks. If you had the Erie Canal fourteen feet deep and one hundred wide, and should bring your lake vessels through, it would cost you double, for every ton per mile of cargo, what it costs in the canal-boat; because the instrument of transportation, so excellent upon the Lakes, is not adapted to the use you make of it upon the canal.

Sir, why is it that steam, so far, has not been successfully employed on the canals? It is because the machinery displaces from the boat a quarter of the cargo; and inasmuch as the whole cost of towing by horses is not more than 30 or 40 per cent of the whole expense, the boatman knows that he had better have cargo in there and draw it by horses than lose the quarter of the whole avails of his voyage by the filling up of his boat with machinery. Sir, I do not mean to say that you will not — I hope that you may — be able, some time or other, perhaps, to invent machinery so small, so light, so compact, that with some form of boat you will be able to use it on the canal. To-day that has not been done. It has not been done on the Delaware and Raritan Canal; it is not done there to-day. In a few moments I will address to the committee some remarks on that subject.

Sir, when you come to navigate, the rule is that the resistance of the water is as the square of the velocity with which the body moves: at two representing the speed, it is four; at four representing the speed, it is sixteen; so there is a practical limit to your velocity, even when the body is moving in an unlimited expanse of water. But when you come into the canal there supervenes another mechanical difficulty, — the bottom and sides of the narrow channel confining by fixed physical

boundaries the water-way in which your boat is moved; and in that water-way, so confined, it is impossible to move your boat, except at a very low rate of speed, without a great waste of power. Anything like a high rate of speed in the movement is impossible. No force capable of being applied is sufficient; the boat comes to a stand. The engineers in 1835 planned the Erie Canal so that the cross-section of the boat should be such as to give the greatest economy for its transit. The rule on that subject, deduced from the experiments of the French engineers referred to by the gentleman from Rockland [Mr. Conger], is that the cross-section of your boat should not be more than as one to six and forty-six hundredths of the cross-section of your water-way. The rule is to some extent modified in practice, for the reason that, though you may lose by not having the greatest economy in towing, you may make up out of the other elements of cost enough to indemnify you for your loss in this particular, and on the whole to gain — within certain limits.

A few years ago I had occasion to make a very careful examination of this whole subject of the proportion of the boat to the water-way, in a controversy which existed between a coal company, doing business in the city of New York, and the Delaware and Hudson Canal Company. The Canal Company had made two changes in their canal, — an improvement, and then an enlargement; and on the results of the enlargement in cheapening the cost of transportation per ton per mile, a certain portion of toll depended; and the question involved a very large sum of money. A very low rate of speed was found to exist in the movement of the boat. The boat moved through the water-way, as was proved there, at the rate of about fourteen and seven one-hundredths miles in a day, and no more; and no more speed could be got — a little less than six tenths of a mile an hour. The transportation was not economical.

I do not intend to refer to any debatable topics, because the controversy is still in the courts; but several things were undisputed. In the first place, about fifty thousand voyages were

tabulated, being all the trips recorded in the books of the Canal Company for eight years, four years of the small boat, and four years of the enlarged boat; and the fact of a reduction of speed was clearly established, and about how much reduction; and the time of the movement of the large boat was accurately ascertained, at the very low rate I have mentioned.[1] In the second place, many of the best engineers in the country, experienced in canal construction and canal navigation, were brought there to testify, and with one accord they said this: "You cannot expect a good navigation if your water-way is less in its cross-section than four and a half times the cross-section of the boat."

My distinguished friend Judge Parker and my distinguished friend Mr. Hardenburgh were in the case on the side opposed to me. They offered no testimony to contradict this testimony of the engineers. There were a great many points in dispute in that controversy, but this point was not.

Now, sir, what you propose to do to-day, if you adopt the plan of the Canal Committee, is, in my judgment, to make the mistake of violating the due proportion between the boat and the water-way. If there be anything in the judgment of the best engineers, most conversant with canal construction and canal navigation; if there be anything in the best experience

[1] The round trip, as computed, embraced four elements; to wit, — first, the transit up the canal; second, the loading; third, the transit down the canal; fourth, the unloading.

The average time consumed in each of 27,493 round trips of the small boat was 13.04 days.

The average time consumed in each of 11,413 round trips of the large boat was 18.35 days.

The difference was 5.31 days; showing 40.72 per cent more time consumed by the trip of the large boat than by the small.

Of this loss of time 34.18 per cent was in the actual transits; leaving the residue, 6.54 per cent, as incident to the loading and unloading the larger cargo, handling the larger boat, and other practical consequences of the use of the larger boat.

During the period taken for the small boat, the canal was closed for at least four hours of the night; while during the period taken for the large boat, the navigation continued, for the most part, through the whole twenty-four hours.

Measured by the tons of the average cargo, each horse would bring down nearly 20 per cent more in large boat per trip; but measured by the time consumed, he would bring down nearly 20 per cent less. He would bring down during a navigation season, 20 per cent less in the large boat than in the small boat.

had in this country, — you will make a boat which is not adapted to your water-way; you will get no economy in your transportation, unless you make an extensive enlargement of your water-way. You may lose the economy you now have: you will gain no new economy.

Sir, the transportation on the Erie Canal is now very cheap. You have now very fine adaptations and an excellent navigation if you keep it in order, and at very low rates of cost. I have here tables showing what it has been for eight years, and also comparing it with lake freights. I should like to show those tables to the Convention. I should be willing to have them printed for the use of the Convention; but in the restricted period allotted to me in this discussion I cannot present the tables, I can only refer to the results. The main advantage which the Lakes have is that from Chicago to Buffalo it is about a thousand miles, and transportation for a thousand miles, of course, can be made much cheaper per mile than it costs for a few hundred. If you will take the freights from Toledo for the last six years, I think you will find that the transportation has not been very much cheaper on the lake than the transportation on the Erie Canal, exclusive of tolls. That is to say, where the voyage is only three hundred miles, you have secured well toward as much cheapness of transportation on the canals, excluding the tolls, as on the Lakes; you have approached that point near enough to show that you have attained very satisfactory results on the Erie Canal; very excellent adaptations; an instrument of transportation, which should not be fundamentally changed in its character without great consideration.

Sir, I did intend to comment on the Report of the State Engineer in 1864, on which the claim that you will reduce the cost of transportation 50 per cent by this change in the structures of the canal — to be made in order to adapt them to the intended change in the form of the boat — is founded. I have that Report here, I have that estimate. It is ridiculous! It begins by stating the present cost of transportation, which is to be reduced 50 per cent. It makes that present cost 2.16 mills

per ton per mile. One mill per ton per mile for 350½ miles is nearly equal to one cent per bushel of corn for the whole distance. The exact result, as I computed it, is 2.12 cents for bringing a bushel of corn from Buffalo to Albany. That cost is to be reduced by the proposed new boat to 1.04 mills per ton per mile, or 1.02 cents for the carriage of a bushel of corn 350½ miles, from Buffalo to Albany.

Why, sir, the price of bringing a bushel of corn from Buffalo to the Hudson River is to-day about five cents, — a little less, exclusive of tolls; and that cannot afford any profit to the carrier. The average price, as shown by the tables, for the last six years is about seven cents. Another table for 1858 and 1859 — and the former year was the lowest ever known in transportation, when there was a general collapse on the canal, on the lake, and among the railroads — shows that the lowest point touched was in June, at about three and two thirds cents; and the average of the year was about five, as that of 1859 was six and three tenths.

1861.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	6.3.7	5.3.2	2.7.5	4.8.3	12.8.1
June	6.3.1	3.3.0	2.2.5	4.8.3	10.3.8
July	5.2.5	3.7.3	2.	4.8.3	10.5.6
August	8.8.1	3.9.8	2.	4.8.3	10.8.1
September . . .	12.9.3	7.6.7	2.	4.8.3	14.5.0
October	17.2.5	10.0.5	3.5.0	4.8.3	18.3.8
November	14.7.5	14.2.5	4.5.0	4.8.3	23.5.8
	10.2.4	6.8.9	2.7.1	4.8.3	14.4.3

1862.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	6.1.5	4.1.7	2.5.0	4.8.3	11.5.0
June	7.6.9	3.7.3	2.2.5	4.8.3	10.8.1
July	11.0.6	5.1.7	2.2.5	4.8.3	12.2.5
August	6.6.9	5.8.0	2.5.0	4.8.3	13.1.3
September	9.5.0	7.6.0	2.7.5	4.8.3	15.1.8
October	11.8.7	8.2.9	3.	4.8.3	16.1.2
November	14.2.5	9.4.8	3.	4.8.3	17.3.1
	10.4.9	6.3.2	2.6.1	4.8.3	13.7.6

1863.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	7.8.3	4.8.6	3.	4.8.3	12.6.9
June	9.0.5	5.	2.5.0	4.8.3	12.3.3
July	4.9.5	5.3.6	2.5.0	4.8.3	12.6.9
August	4.2.5	4.6.0	2.5.0	4.8.3	11.9.3
September	4.7.5	4.2 5	3.	4.8.3	12.0.8
October	7.2.7	6.6.1	3.	4.8.3	14.4.4
November	7.7.8	9.7.8	*3.	4.8.3	17.6.1
	6.5.6	5.7.8	2.7.9	4.8.3	13.3.9

* Estimated.

1864.

Month.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	8.0.6	7.0.4	3.	4.8.3	14.8.7
June	12.5.6	8.9.2	2.5.0	4.8.3	16.2.5
July	6.3.2	10.1.1	2.	4.8.3	16.9.4
August	7.7.5	10.9.8	3.	4.8.3	18.8.1
September	7.5.0	8.5.5	3.	4.8.3	16.3.8
October	7.6.2	8.3.6	3.	4.8.3	16.1.9
November	12.7.5	8.5.9	3.	4.8.3	16.4.2
	8.9.4	8.9.4	2.7 8	4.8.3	16.5.5

1865.

Month.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	6.7.5	4.9.2	3.	4.8.3	12.7.5
June	6.	4.6.1	2.2.5	4.8.3	11.6.9
July	7.9.4	5.6.1	2.	4.8.3	12.4.4
August	6.6.9	5.6.7	2.	4.8.3	12.5.0
September	10.7.5	6.3.6	2.5.0	4.8.3	13.6.9
October	13.8.8	11.1.7	3.2.5	4.8.3	19.2.5
November	11.5.0	12.0.4	3.5.0	4.8.3	20.3.7
	9.0.7	7.2.0	2.6.4	4.8.3	14.6.7

1866.

Month.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal Tolls.	Buffalo to New York.
May	11.1.9	4.3.0	2.5.0	4.8.3	11.6.3
June	13.6.3	7.0.4	2.5.0	4.8.3	14.3.7
July	9.6.3	8.0.5	2.	4.8.3	14.8.8
August	8.4.4	6.4.8	2.	4.8.3	13.3.1
September	10.3.7	7.3.0	2.5.0	4.8.3	14.6.3
October	15.2.5	7.5.4	2.5.0	4.8.3	14.8.7
November	11.7.5	9.5.5	2.	4.8.3	16.3.8
	11.4.7	7.1.8	2.2 9	4.8 3	14.3.0

TABLE II. — MONTHLY AVERAGES OF FREIGHTS, PER BUSHEL.

1858.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
April	4.	. . . .	. . . .	3.8.6.4	. . . .
May	3.1.6	6.9.7.6	1.5.0	3.8.6.4	12.3.4
June	3.7.5	3.6.3.6	1.5.0	3.8.6.4	9.0.0
July	3.6.	4.6.3.6	1.5.0	3.8.6.4	10.0.0
August	2.5.8	4.3.0.6	1.5.0	3.8.6.4	9.6.7
September	3.1.2	4.6.3.6	1.5.0	3.8.6.4	10.0.0
October	3.7.	5.3.3.6	1.5.0	3.8.6.4	10.7.0
November	3.	5.6.3.6	1.5.0	3.8.6.4	11.0.0
	3.2.7	5.0.2.3	1.5.0	3.8.6.4	10.3.9

1859.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
April	4.	6.0.0.6	1.5.0	3.8.6.4	11.3.7
May	3.2.5	4.8.8.6	1.5.0	3.8.6.4	10.2.5
June	3.7.	5.4.3.6	1.5.0	3.8.6.4	10.8.
July	3.	6.1.3.6	1.5.0	3.8.6.4	11.5.
August	2.9.4	6.1.9.6	1.5.0	3.8.6.4	11.5.6
September	5.2.	4.0.3.6	1.5.0	3.8.6.4	9.4.
October	6.8.7	7.5.1.6	1.5.0	3.8.6.4	12.8.8
November	7.4.4	10.1.9.6	1.5.0	3.8.6.4	15.5.6
	4.5.5	6.3.0.1	1.5.0	3.8.6.4	11.6.6

To save one cent per bushel on three hundred and fifty miles of transportation is the object presented in this Report; and the statement of the existing cost in the present condition of the business of transportation is scarcely more than one third — certainly less than one half — what the real present cost is. The result is made out by counting eight and a half days as the time of the trip down, charging the wages and support of the crew at about a fair rate; charging for the use of the boat about half—

I think less than half—what it is certainly known now to cost; and then, sir, leaving out of the calculation all the time taken in loading the boat and in unloading the boat, and all the expenses running during those times,—which are just as much a charge on the transportation as when the boat is actually moving; and leaving out also all the time and all the expenses of the return trip. The boat is taken from Buffalo down to tide-water, and expenses charged *per diem* during the time of its passage down; but not one cent charged during the time of the return, or of the loading or unloading; leaving the boat and the crew and the horses to pay themselves and feed themselves during every part of the entire service, except the imaginary eight and a half days of the transit down.

Sir, if in any incorporated company in which I am a director, an engineer should present such calculations as the basis of important action, I should deem it my duty to move to dismiss him for incompetency.

And yet that calculation, so far as I can find, is the sole basis of the assertion so often made, and reiterated until our ears are wearied, that the change in the locks proposed by the Canal Committee will reduce the cost of transportation on the Erie Canal 50 per cent. That Engineer's Report of 1864 which contains it, is the substratum of all the monstrous growth which has developed into the scheme of the Canal Committee.

Now, sir, one word as to the Delaware and Raritan Canal. We have heard a great deal about that. It figures magnificently in the committee's Report. I have taken some pains, I have spent three or four days in looking into that. I have seen leading parties doing business on that canal, and some of the principal officers of the Company which owns it, and I should to-day, if there had been time, have had a letter from the president of the Company, answering interrogatories which I proposed to him, and which he kindly consented to answer. There is a canal, having just about such locks as it is proposed to construct on the Erie Canal at the expense of pulling up all the present splendid structures, and there is not a boat

on it of the description for which we are to make this radical and costly change in the Erie Canal; not one. There are some little propellers which do merchandise business between New York and Philadelphia, — merchandise generally, and the largest of them carry from one hundred and fifty to two hundred and fifty tons. They are not for canal service exclusively, or even mainly. The canal is forty-three miles long, with thirty-five miles of harbor and river navigation between it and New York, and twenty-five or more miles of navigation in the Delaware between it and Philadelphia. These propellers have the advantage in nearly two thirds of their voyage of much greater speed than is possible in any canal — three, four, or five times the speed. The canal is wider than the Erie, and its depth has been progressively increased from eight feet to nine or nine and a half feet, as stated in the last Report. I conversed with several proprietors in these propeller lines. They said they would not take wheat as freight from Philadelphia to New York for less than five cents a bushel, besides tolls, which are one and a quarter cents; and that it is not desirable at that, and would not be taken at even eight cents, including tolls, if other freights were to be had. Those charges would be nearly equal to those on grain from Buffalo to Albany, or about three times as much per mile. Sir, I did hear of one two-hundred feet boat at the office of the superintendent of the Towing Company, but I was informed that this boat was considered a nuisance to its owners and everybody else, and was cut in two, a bow and a stern put on, and converted into two boats. And to-day, in that canal, which brings down a tonnage nearly as large as the Erie, — which brought from Philadelphia to New York last year two millions and a quarter tons of coal, — it is all brought in canal-boats towed by horses.

Mr. KERNAN: How much cargo?

From two hundred to two hundred and forty tons. The president of that Company told me that he thought it would be unwise in us to make the locks on the Erie Canal more than

twenty feet wide. He thinks that eighteen-feet boats give the most economical navigation. I should say in regard to the coal tonnage — I must speak somewhat irregularly, because my time has nearly elapsed — that a certain portion of it, about one quarter, comes from the Lehigh region, and down the Lehigh Canal and Delaware division and feeder to Bordentown; and of course, to avoid transshipment, it would come by the same boat through. About one quarter comes down the Schuylkill Canal, and through in boats used on that canal; but about seven hundred thousand tons come by the Reading Railroad to Richmond, which is a part of Philadelphia, is destined to the city of New York, and at Richmond is first put into boats from the railroad. The canal is forty-three miles, and the rest of the hundred and three or more miles is river navigation on the waters of the Delaware and the waters of New York Harbor. So that there is a great motive to use machinery in this short connecting channel. If steam could be used in that to advantage, they could use it freely in the great waters on each side of the canal. Of that seven hundred thousand tons, which first takes the water at Philadelphia, about two-hundred thousand is transported by the Reading Railroad itself. It was found a necessity to make the Reading Railroad practically terminate in the city of New York; and that great corporation has gone into the boating business, in order to regulate the water-rates of transportation in connection with its own line by rail. It has a few schooners for use on Long Island Sound, in connection with the canal, and of about the same tonnage as the canal-boats; but its main equipment for this business is seventy-four canal-boats, all constructed for it or by it — expressly to be used in the business — about seventeen and one half, in width, and generally of dimensions similar to the boats of the Erie Canal. I had memoranda of these dimensions, but cannot at this moment lay my hands upon them.

The president of the Reading Railroad is, I think, an engineer, as he certainly is an able business man, and the president of the Company which owns the Delaware and Raritan is

certainly an experienced engineer, as is also the superintendent of that work, and both are men of intelligence and force. Sir, it may be that such gentlemen as these, the official heads of great corporations, distinguished for enterprise, commanding ample capitals and ample revenues, do not bring into use the best means for economical transportation which they can find. They certainly intend to do that. If up to the present time the means now in use are not the best means possible, they are the best means which these skilful and experienced officers have been able to discover. I do not say that some man will not come along to-morrow with an invention which will supersede the present mode of towing or the present shape of the boat. I do not intend to limit the discoveries or inventions of human ingenuity; I never have done that. I have never ventured to set boundaries to the growth of business in future years, or to decide on the future aggregate tonnage of the Erie Canal. I hold myself open to consider, without too much distrust or incredulity, all proposed improvements; to test all that afford a reasonable probability of success. But, sir, acting as business men, as prudent men, as men of care, as men of wisdom and caution, when we begin at the Erie Canal and pull up, from one end of it to the other, its double lines of locks and its aqueducts, — its massive masonry, its splendid and costly structures, the durable monuments of engineering skill, — we are bound to do so on the highest degree of actual knowledge attainable, on the best of scientific advice, on ascertained experience, so far as the teachings of such experience can be collected and applied. We cannot, I say, put any man's crotchet into the Constitution, on this subject, without a gross breach of trust and duty to the people of the State.

Sir, we have no information on this subject in the reports of the Canal Committee, or of the sub-committee, or in the testimony taken before them, or in any reports of previous years, to justify us in taking such action as is here proposed. We have no trustworthy information as to the present condition and working of the locks tending to such conclusions in respect to

their incapacity as are alleged. We have no thorough tests applied to them, or any tests under the supervision of competent and trustworthy judges. We have no such tests as were applied by Mr. Flagg in 1843, or by the Finance Committee in 1846, or as would be applied by any prudent business man. In place of such evidence we have only loose assertions and gross exaggerations, contradicted by actual experience and record evidence. We have no evidence whatever that the proposed boat of two hundred feet length and twenty-three or twenty-four feet width — to accommodate which all the locks and structures are to be changed — would be an improvement for use in the present water-way of the canal. We have constantly heard the Delaware and Raritan cited as an instance of the practical success of the proposed improvement, and yet not a human being who cites the authority seems to have taken the trouble to obtain any correct information on the subject, or even to inquire of any one of the numerous parties in New York doing business on that canal. And it turns out that there is no such boat in use there; that there is as yet no use of steam to propel any canal-boat there; that there is no practice on that canal or judgment of its managers sanctioning our proposed boat, but exactly the contrary. Why not try the experiment on that canal — the experiment of the new shape of the boat and its propulsion by steam — before revolutionizing the whole construction of the Erie?

Then, as to the adaptation of the new boat and the new locks and aqueducts to the water-way of the canal, there has been very little investigation or consideration in that respect. The very slight and partial examinations before the Canal Committee are chiefly remarkable for the obvious effort to get witnesses to favor a predetermined conclusion, and the very small success which attended that effort. A conclusion so opposed to the whole theory on which the adaptations of the Erie Canal were formed, so opposed to the judgment of all the best canal engineers, so opposed to all the experience which we have had anywhere in this country, ought at least to be fully

discussed and thoroughly investigated before we adopt it. We have nothing before us but hasty assumption.

Again, has it been even claimed that the new boat, of such great dimensions, is adapted to towage by horses, or is the whole operation completely dependent on the success of steam propulsion in the canal? We have no information on that subject. How utterly worthless are the estimates as to the reduction in the cost of transportation which are submitted to us, I have already shown.

Sir, I repeat, with a full sense of the responsibility of the declaration, — and I know there is nobody who would be held by the public opinion of the Western States to a higher accountability for his action upon such a question than I should, — I do not hesitate to confront such responsibility distinctly on the ground that, if there are to be improvements made, we have not before this body, as yet, any reasonable and satisfactory evidence upon which to act.

Sir, I believe that if you were to enlarge the locks in the way proposed, you would find it absolutely indispensable to enlarge the water-way, in order to get a good transit for a boat increased in width and length so much as this boat is proposed to be. And the boatman will make — he always has and will hereafter make — his boat just as wide as it can get through the locks. Then, sir, you will have but one lock in place of two. The present equipment is worth many millions, and must continue in use. How can you increase capacity by locking boats in pairs through one lock, instead of locking them singly through two locks standing side by side?

Sir, if I were compelled to adopt either alternative, I would to-day sooner vote to build another independent set of the large locks, than vote to try to save the old material by putting it into the new single lock which it is proposed to construct. I observe that Mr. McAlpine tells the Canal Committee that it will cost more to use that old material. Mr. Stuart, who is one of the fathers of this project, expects to save a million of dollars. I asked Mr. Jervis the other day, when he was here to see me

on some other business, and he was inclined to agree with Mr. McAlpine. I asked Mr. Welch last week in New York, and he was inclined to the same opinion, although neither gentleman had made it a subject of very much study. And I fell in casually with an old friend of mine, who for twenty-five years has been the chief engineer of the Wabash and Erie Canal in Indiana, which is longer than the Erie, but which the railroads are driving out of existence; and he told me: "Don't flatter yourself that you are going to save more than half of the old material, particularly if the cement is good, and you take it down in the winter."

Sir, when I consider the immense inconvenience to the navigation which the attempt to use the old material will cause, the doubt whether it will result in any saving of money, the loss of the use of the present locks, and the probability that the construction of the one set of long locks will be followed by a demand for a second set, I am more afraid of the economy of the committee than of their extravagance. I think their economy is more perilous than their extravagance. I think, if I may be allowed the expression, that their economy is more extravagant than their extravagance itself.

Sir, we have on the Erie Canal a good adaptation. I do not say we can never improve it, but I do say that we should not rashly attempt a reconstruction of it which alters fundamentally the conditions of the transportation; which alters the proportions between the boat and the water-way, between the structures and the water-way; which changes the complicated adaptations of boat to canal, — adaptations of boat and crew and towing powers, — on which economy of transportation depends. I certainly say, sir, that it would be most unwise in this Convention to put in the fundamental law of the State of New York — what, sir? Engineering. What, sir? Hydraulics; and then to issue our mandate to the legislative bodies of the State to go on with the work of construction tied up by our conditions. Aye, sir, to enact new laws, and reverse old known laws in engineering and hydraulics.

One of the conditions imposed by the committee is that you shall not reduce the tolls; and, unless I greatly mistake, if it happens, not from any diminution of the currency, but from the gradual increase in the supply of the products, that you have a heavy fall in the agricultural prices, you will be compelled to reduce the tolls. That we shall not reduce the tolls! Why, sir, the Convention of 1846 did not dare to put such a provision in that Constitution. The Committee on Finance in 1846 did not dare to insert such a clause.

A second condition imposed by the committee is that you shall not enlarge the prism of the canal, though that may be absolutely necessary to the use of boats such as your new locks will bring upon the canal, and though Mr. Jervis tells you that without an enlargement of the prism you will make neither capacity nor economy.

The third condition is that you shall pull up the double locks from end to end in the midst of this immense tonnage, doing the work early in the spring or late in the fall or in the winter — perhaps compelled to build a house over every lock in order to save the old materials, perhaps keeping the canal closed a month earlier and later, as suggested by Mr. Stuart — that you shall go on and do this work in this way.

Sir, one word as to the cost of this proposed work. I told one of the engineers yesterday that, having had a good deal to do with construction in the last five years, I believed that an estimate founded upon 50 per cent addition to the prices of 1860 could not by any possibility come out right in the present state of prices. There may be a fall hereafter, but there has not been a time in three years when anything in the way of construction could be done at less than from 80 to 125 per cent on the prices of 1860. Well, sir, he admitted that prices were lower in 1863, when these estimates were made, than they have been since, and that these estimates would not now suffice.

Sir, this is an incomplete, insufficient, crude, immatured, inconsiderate project, which no man in ordinary business would

find himself justified in acting upon without a great deal of further information. What the Erie Canal wants is more water in the prism — more water in the water-way. A great deal of it is not much more than six feet, and boats drag along over a little skim of water; whereas it ought to have a body of water larger and deeper even than was intended in the original project. Bring it up to seven feet, — honest seven feet, — and on all the levels, wherever you can, bottom it out; throw the excavation upon the banks; increase that seven feet toward eight feet, as you can do so, progressively and economically. You may also take out the bench-walls.

One of the best forwarders in the city of New York told me the day before yesterday that he could make trips in a quarter less time, and reduce the cost of transportation one quarter, if you would give him an honest seven feet. Sir, I will undertake to say that if you will appoint in full charge of the Erie Canal men who can be picked out in this State, and let them manage it for a year on these principles, practically, they will get the greater reduction of transportation by the expenditure of a million of dollars than my friend the gentleman from Erie will get by his gunboat enlargement, if it is carried into effect, at a cost starting with eight millions and culminating in twenty or thirty or more millions.

Mr. Chairman, I hold in my hand a letter addressed to me by Mr. Jervis, which, if it be the pleasure of the Convention, I will submit for the purpose of being read.

The Secretary proceeded to read the letter, as follows : —

ROME, N. Y., Sept. 4, 1867.

DEAR SIR, — You ask my opinion on the views presented by report of committee in Convention in relation to the State canals.

1. I disapprove of the plan of superintendence by a general superintendent. On this point I do not think it necessary to add to my letter to Mr. Huntington on this subject, referred to Canal Committee.

2. The main feature is the capacity of the Erie and Oswego canals to accommodate the traffic.

The committee assume that (1) the canals have not sufficient capacity for the demands of transportation, and (2) that they are not adapted to the cheapest transportation. They propose to remedy both defects by enlarging the locks to two hundred and twenty-five feet length by twenty-five feet width, to provide for boats two hundred and twenty feet long by twenty-three wide. They propose no enlargement of canal except to take out a portion of the inside slopes, so as to increase the bottom water-line to fifty-two feet, leaving the top width as it is. I have not the time to make a proper examination of a subject of so much importance, and can only take it up in a general way.

It is claimed that with double locks and boats carrying, say, two hundred tons, the canal is not able to accommodate the transportation that offers.

It appears that in 1847, when the average cargo of boats was sixty-seven tons, the tons delivered at tide-water were 1,431,252. Now if the locks had been doubled, the tonnage by the boats of 1847 would have been 2,862,504 tons. The tonnage by present canal in 1862, by boats averaging one hundred and seventy tons, was 2,917,094 tons, — but little in excess, almost the same, as could have been done by the old canal with double locks; and for the year 1866, or any other year, except 1862, the old canal with double locks could have done the business.

Now it clearly results that if the present canal has reached its capacity, then nothing has been gained in capacity by its enlargement; that is, boats of one hundred and seventy tons on the present canal have not increased the capacity of the canal.

Another view as to capacity. The lockages in 1847, with single locks for boats averaging sixty-seven tons, were, say, forty-four thousand. In 1862, with boats of one hundred and seventy tons and double locks, the lockages were, say, thirty-five thousand. Now if the canal had reached its capacity in 1862, the capacity for lockages in number of boats passed of the one hundred and sixty-seven ton boats, as compared to the sixty-seven ton boats, is as one to two and a half; that is, the old locks would pass two and a half boats to the enlarged locks' one passed. This is almost exactly the same ratio as the respective lockages; so it is clear, on the supposition that it has reached its capacity, nothing has been gained in capacity by the enlargement that could not have been gained by simply doubling the old locks.

From this it appears the old arrangement of locks and boats

had a superiority to the present locks and boats. The difficulty cannot arise from the relative section of boat to prism of canal, for in the enlargement this was more favorable than in the old canal.

That the present boats require twice and a half the time required for the old boats to pass the locks, indicates something wrong in the construction or management of the present boats. If this is not the case, then any enlargement of the locks and boats could not increase the tonnage capacity.

If delays equivalent to the increased size of boats have been found in the present case, when it has been connected with more than increased ratio of prism of canal, what ground is there to expect benefit to the capacity by enlarging boats, with no material enlargement of prism?

But I do not believe the canal has reached its capacity. I do not believe that with proper adaptation and good management it will require more than once and one fourth the time to pass the present boats through the locks, as compared with the old boats.

If boats are properly adapted to locks, so as to leave proper way for the displacement of water as the boat enters or leaves the lock, with a prism of canal adapted to the easy management of boats, there should not be more than one fourth time added to that required for the old boats. This would provide for double the tonnage of 1862.

The committee seem to adopt the opinion that a canal-boat within limits that can pass another boat will be navigated economically, according to size and capacity of boats. This, so far as I know, is not sustained by any well-ascertained experience. To enlarge the boats as proposed, without enlarging in a corresponding degree the prism of canal, will, in my opinion, be a damage to the capacity and economy of the canal transportation.

In my judgment there should be a careful scrutiny into the particulars of locks and boats, to find the difficulty that is supposed to exist. That there is a difficulty that may be corrected, I have no doubt.

This is a subject of too much importance to be disposed of in a hasty manner. I am for doing what is expedient to make the canal what is necessary to its capacity and economy of transportation. But this requires a thorough investigation of all the questions that influence this subject. In the first place, a thorough investigation and correction that will make the present canal as useful as is practicable; and, as transportation presses, let the whole question be thoroughly investigated and fully reported upon

in all its bearings, so that the proper improvement may be decided on after full consideration of the subject.

It should be kept in mind that a boat, to be most economically navigated, must have a proper relation to the prism of the canal.

I cannot go into particulars, — in fact I have not the data; but I should regard it unwise to enter on so important a matter without full investigation.

Respectfully yours,

JOHN B. JERVIS.

HON. S. J. TILDEN.

XXI.

In the Democratic State Convention which assembled at Albany on the 11th of March, 1868, to select delegates to the National Democratic Convention that was to nominate candidates for the Presidency and Vice-Presidency, Mr. Tilden took occasion, in the speech which follows, to arraign the Republican party for continuing an irritating policy toward the people of the States lately in rebellion, and especially for seeking to perpetuate its power in the country by extending the right of suffrage to the African, and, as a consequence, subjecting ten States of the Union to a military and proconsular rule, under which the residents of those States had little or no voice or representation. From the impolicy of the course pursued by the Republican leaders on this question he inferred the necessity and importance of a change of administration.

THE REPUBLICAN POLICY IRRITATING.[1]

Gentlemen of the Convention: —

On the formation of the government of the United States, the question still remained to be solved, what practical character should be impressed upon it in its actual administration. Gouverneur Morris, who had favored a centralized system tending to aristocracy and monarchy, when asked his opinion of the Constitution, answered, "That depends on how it is construed."

During the controversies of its earlier years, men's minds were constantly turned toward organic questions. Every measure was tested by its relations to such questions. Parties imputed to each other designs to change the character of the government. (Jefferson in the nation and George Clinton in this State led the Democratic masses against a centralism which they feared would in practice assimilate our new institutions to the British system, from which the Revolution had emancipated us; and it is now historically certain that a powerful element in the Federal party of that day did in fact desire such a result.) Hamilton believed Burr, even while the latter stood high in public esteem, to be capable of a Roman or French ambition, and did not deem his success in establishing a dictatorship or an empire impossible, if he could gain the Presidency and wield its powers for that object. Other eminent public men entertained the same fears, in the event of a civil convulsion, which Hamilton expected. With such ideas

[1] Speech at the Democratic State Convention of New York, held at Albany, March 11, 1868.

in men's minds, the political contest of 1800 was fought and decided in the city of New York for the State and for the Union.

The result closed the first era of our governmental history. The liberal and beneficent political philosophy of Jefferson became ascendent everywhere in the public councils and in the popular opinion. The essential character of the government became fixed, and men's ideas in respect to it settled. Organic questions, debates as to the structure of the government, ceased to occupy public attention. For sixty years our controversies turned on questions of administrative policy. Eddies in the current of our progress there were. The war of 1812, even under Madison, caused a centralization in administrative measures and policies which cost us a quarter of a century of peace to remove. But, on the whole, the master-wisdom of governing little and leaving as much as possible to localities and to individuals, prevailed; and we progressively limited the sphere of governmental action, and enlarged the domain of individual conscience and judgment. These sixty years were a period of transcendent national growth and prosperity, and of universal happiness among the people.

Civil War.

How and why we passed from that fortunate condition into a gigantic civil war; the moral and social causes which gradually prepared such a result; the events of that conflict, — I cannot pause to discuss. When at last we brought the contest to a successful issue, and especially when the voluntary extinction of slavery declared — what moral and material causes had already made certain — that our Northern systems of society and industry are to prevail in every part of this continent which shall be occupied by us, I hoped that we might speedily restore the people of the revolted States to their true relations to the Union; and then that we might at once begin to deal with the administrative questions which the war had cast upon us.

Questions of this sort there were enough for a generation of the most earnest political activity. The reaction against the

heresy of secession, the public necessities during a great war, the lead throughout all that struggle of a party always imbued with false ideas of government and with obsolete notions of political economy, and always dominated over by class interests, had created for the time an overwhelming tendency to centralism. All our administrative systems had become buried under a fungus-growth which was smothering all trade and sucking out the vitality of all the industries of the country.

I looked to the Democratic party as the only agency through which the government could be brought back to the liberal ideas and beneficent policies which had prevailed under Jefferson and Jackson; but before we could enter on the work of administrative and economical reform, pacification was necessary. Pacification necessary first.

A complete and harmonious restoration of the revolted States would have been effected if the Republican party had not proved to be totally incapable of acting in the case with any large, wise, or firm statesmanship.

A magnanimous policy would not only have completed the pacification of the country, but would have effected a reconciliation between the Republican party and the white race in the South. Every circumstance favored such a result. The Republican party possessed all the powers of the government, and held sway over every motive of gratitude, fear, or interest. The Southern people had become thoroughly weary of the contest; more than half of them had been originally opposed to entering into it, and had done so only when nothing was left to them but to choose on which side they would fight. Few would ever have favored the measures which led to the conflict of arms if they had anticipated such a conflict; many had all the while felt a lingering regret in ceasing to belong to a great country which they had been accustomed to regard with proud ambition; and all remembered that they had been prosperous, contented, and happy as American citizens. The mass yearned to come back to what was left of their birthright. On the surrender of General Lee every hostile sword fell, and the

abolition of slavery was yielded as a peace-offering with universal alacrity.

All that was necessary to heal the bleeding wounds of the country and to allow its languishing industries to revive, was that the Republican party — which boasts its great moral ideas and its philanthropy — should rise to the moral elevation of an ordinary pugilist, and cease to strike its adversary after he was down.

This crisis was the trial of the Republican party. The question was whether it could become a permanent party in the country, continuing to govern for the present, capable of being, from time to time, called to govern; or whether it must admit itself to be but a revolutionary faction, accepted by the people during war, accepted for the venom, if not the vigor, with which it could strike, acting often "outside the Constitution," often converting the regular and lawful organs of the government into a French committee of public safety or a Jacobin club, and now incapable of adapting itself to the work of pacification when that has become the commanding public necessity; and, therefore, its mission being fulfilled, having nothing left to it but to die and be forever dismissed from our national history.

Failure of Republican party.

In this trial the Republican party completely failed. It could do nothing but strike, when to strike was no longer necessary, or wise, or humane, or Christian; and when to continue to strike was ruin to all the reviving commerce and reviving industries of the victorious North, and inflicted anew upon an exhausted people the burdens of war after war was ended.

It could have won into alliance with it the majority of the white race of the South, and thus have acquired the means of carrying on government there on the principle and through the methods of our American system of government. It is the peculiar and crowning glory of that system that it is so full of mutual dependencies between the State and Federal machineries and the different parts of each, and involves so much of

the voluntary action of the people in every locality, that two thirds of the States cannot govern one third without a large co-operation from the people of that third. The necessity of this co-operation limits the oppression which can be exercised against a local minority. The seeking of that co-operation informs the majority, and brings it into relations with the minority. In trying to acquire the means to govern, the majority become qualified to govern. Our American system of government was not invented, it grew. It is wiser and better than anything which was ever invented. It grew up among a people whose government was everywhere carried on by the consent of the governed, and voluntary aid and general co-operation were assumed in all its growth, and became necessary conditions to its action. It is not a convenient instrument for tyranny.

The Republican party, finding no difficulty outside of itself, found a difficulty in itself which was insurmountable, — it could not change its own nature. If it could have generated one leader capable of the generous ambition of pacificating the country and founding a permanent ascendency on the ultimate public opinion of the whole country, it might have lived. Even a large demagogue might have been a national benefaction. But two hundred small demagogues — not one of them able to extend his vision beyond the horizon of one Congressional district, nor having much moral sway over the opinion of his constituency — found it easier and safer to stimulate the hatreds left by the war, and the provincial passions which led to the war, than to act with the wise moderation of a comprehensive statesman, or even the prudent liberality of a conqueror.

The Republican party recoiled for a while on the fatal brink of the policy on which it at last embarked. It had not the courage to conciliate by magnanimity, and to found its alliances and its hopes of success upon the better qualities of human nature. It totally abandoned all relations to the white race of the ten States. It resolved to make the black race the governing power in those States,

It resolves to establish negro supremacy.

and by means of them to bring into Congress twenty senators and fifty representatives — practically appointed by itself in Washington.

It is evident that the internal government of those States was not the main object of this desperate expedient. The State organizations had been comparatively neglected. It was only through new State organizations and new electoral bodies that the twenty senators and fifty representatives could be secured to the Republican party after it refused to trust to pacification. The effect of a gain to the Republican party of twenty senators and fifty representatives is to strengthen its hold on the Federal Government against the people of the North. Nor is there the slightest doubt that the paramount object and motive of the Republican party is by these means to secure itself against a reaction of opinion adverse to it in our great populous Northern commonwealths. The effect of its system and its own real purpose is to establish a domination over us of the Northern States.

When the Republican party resolved to establish negro supremacy in the ten States in order to gain to itself the representation of those States in Congress, it had to begin by governing the people of those States by the sword. The four millions and a half of whites composed the electoral bodies. If they were to be put under the supremacy of the three millions of negroes, and twenty senators and fifty representatives were to be obtained through these three millions of negroes, it was necessary to obliterate every vestige of local authority, whether it had existed before the rebellion, or been instituted since by Mr. Lincoln or by the people. A bayonet had to be set to supervise and control every local organization. The military dictatorship had to be extended to the remotest ramifications of human society. That was the first necessity.

The next was the creation of new electoral bodies for those ten States, in which, by exclusions, by disfranchisements and proscriptions, by control over registration, by applying test-oaths operating retrospectively and prospectively, by intimida-

tion, and by every form of influence, three millions of negroes are made to predominate over four and a half millions of whites. These three millions of negroes — three fourths of the adult male portion of whom are field-hands who have been worked in gangs on the plantations, and are immeasurably inferior to the free blacks whom we know in the North, who have never had even the education which might be acquired in the support of themselves or in the conduct of any business, and who, of all their race, have made the least advance from the original barbarism of their ancestors — have been organized in compact masses to form the ruling power in these ten States. They have been disassociated from their natural relations to the intelligence, humanity, virtue, and piety of the white race, set up in complete antagonism to the whole white race, for the purpose of being put over the white race, and of being fitted to act with unity and become completely impervious to the influence of superior intellect and superior moral and social power in the communities of which they form a part.

Of course such a process has repelled, with inconsiderable exceptions, the entire white race in the ten States. It has repelled the moderate portion who had reluctantly yielded to secession. It has repelled those who had remained Unionists. The first fruit of the Republican policy is the complete separation of the two races, and to some extent their antagonism.

The means.

How, my fellow-citizens, has this work been accomplished, and at whose cost? The main instruments have been the Freedman's Bureau and the army of the United States.

The Freedman's Bureau is partly an eleemosynary establishment which dispenses alms to the liberated slaves and assumes to be their friend and protector. It is to a large extent a job for its dependents and their speculative associates. But in its principal character it is a political machine to organize and manage the three millions of negroes. Its cost, as reported by itself to the public Treasury for the last two years, is about ten millions of dollars.

The army is used to overawe the white race, and sometimes to work and sometimes to shelter the working of the political system which goes on under the military governments of the ten States.

The cost.

You have seen telegrams announcing the reduction of the army expenses. When I was in Washington the week before last, I took some pains to ascertain the truth. I am able to inform you, from authentic data, that the monthly payments at the Treasury for army expenses up to the beginning of the present month exceed twelve millions. I assert that they are now, to-day, running at the rate of one hundred and fifty millions per annum. They have not been less, but probably more, for the two years past. This does not include pensions, which are thirty-six millions more.

Remember that it is excessive taxation which crushes the industrial masses in European monarchies and despotisms, and that this taxation is mainly caused by their military establishments, kept up by the ambitions of their rulers, by their mutual jealousies, and by the fears which tyrants entertain of their own peoples.

Remember that our wise ancestors warned us against standing armies and all those false systems of government which require standing armies. They formed the Union of the States that we might be free from the jealousies of coterminous countries, which have been the usual pretext of tyrants for maintaining costly military establishments. They founded that Union on the principle of local self-government, to be everywhere carried on by the voluntary co-operation of the governed. They did not intend that one part of our country should govern another part, as European tyrants govern their subjects. Rebellion, which for a time disturbed this beneficent system, is conquered, but we do not return to government on the principles of our fathers. The Southern people are willing and anxious to do so. We refuse. See how the refusal brings upon us the calamities foretold by the prophetic statesmen and patriots of 1776 and 1787. Compare the army expenses of free America with those of the Military Powers of Europe.

Great Britain, which encircles the globe with her military posts, and rules in dependent provinces one hundred and fifty millions of subjects, expended for her armies, including pensions, in 1866–1867, about £14,340,000, and in 1867–1868 about £14,752,000, or about seventy-two millions of dollars a year.

France, which stands at the head of the Military Powers of Europe, expended for her army, as the average of seven years officially reported, about eighty-six millions of dollars.

Prussia, which has just consolidated under her dominion the new Germanic empire, expended on her army in 1867 about twenty-nine millions of dollars.

And we, free America, who have offered up the lives of two thirds of a million of our youth, and more than three thousand millions of dollars, to restore the Union and escape the necessity and the pretexts for such military establishments, after our object ought to be completely accomplished, find ourselves subjected to more than fifteen millions a month, more than half a million a day, about one hundred and eighty-six millions a year for army expenses and pensions, as two items of the cost of our government.

Now I assert two facts, — first, the main employment of the army is in occupying the Southern States; secondly, if the Union were fully restored, the army expenses can be, and ought to be, reduced one hundred or one hundred and twenty-five millions a year. The average for the ten years prior to the rebellion was about fifteen millions; and our experience in raising volunteers shows that a large standing army is unnecessary.

You may safely count that reconstruction carried on by these military governments costs you at least one hundred millions a year in army expenses, unnecessary for any other purpose. To carry on the experiment of negro supremacy in the ten States for two years, — to bring in twenty senators and fifty representatives, deputies of the three millions of liberated slaves, allies and instruments of the party objects of the

Republicans, — will cost you two hundred millions of dollars in direct army expenses. How much more in other expenses, created or permitted to continue, how much in future years, I can only conjecture. I venture to predict that five hundred millions will not consummate the system.

These immense sums have to be wrung from the people in taxes, which cost those who pay them much more than the amount thus expended, at a time when the illusions of paper money are passing away, and the country discovers itself exhausted and impoverished by war; when no commerce is profitable, and nearly all manufactures are carried on at a loss; when labor is scantily employed, and the cost of living is high; when taxation closely approaches to the whole net income of all capital and all labor in the country; and when this condition is daily growing worse, and can be alleviated only by reducing expenses, remitting taxes, liberating trade and industry, and restoring them to their natural courses.

If those three millions of negroes elect twenty senators and fifty representatives, they will have ten times as much power in the Senate of the United States as the four millions of whites in the State of New York. On every question which concerns the commercial metropolis — every question of trade, of finance, of currency, of revenue, and of taxation — these three millions of liberated African slaves will count ten times as much in the Senate as four millions of New Yorkers. One freedman will counterbalance thirteen white citizens of the Empire State. These three millions of blacks will count ten times as much as three millions of white people in Pennsylvania; ten times as much as two and a half millions in Ohio; ten times as much as two and a quarter or two and a half millions in Illinois; ten times as much as one million and a half in Indiana. These three millions of blacks will have twice the representation in the Senate which will be possessed by the five great commonwealths, — New York, Pennsylvania, Ohio, Indiana, and Illinois, — embracing thirteen and a half millions of our people.

Let me not be told that this enormous wrong is nothing more than an original defect of the Constitution. I answer that it derives most of its evil and its danger from the usurpations of the Republican party.

Usurpations of the Republican party.

We have now reached a period when everything valuable in the Constitution and in the government as formed by our fathers is brought into peril. Men's minds are unsettled by the civil strifes through which we have passed. The body of traditionary ideas which limited the struggles of parties within narrow and fixed boundaries is broken up. A temporary party majority, having complete sway over the legislative bodies, discards all standards, — whether embodied in laws, constitutions, or in elementary and organic principles of free government, — acts its own pleasure as absolutely as if it were a revolutionary convention, and deems everything legitimate which can serve its party aims.

Changes are dared and attempted by it with a success which, I trust, is but temporary, — changes which revolutionize the whole nature of our government.

1. If there be anything fundamental in government or in human society, it is the question, what elements shall compose the electoral bodies from which emanate all the governing powers. The Constitution left the States with exclusive power over the suffrage, and the States have always defined and protected the suffrage from change by their fundamental laws. Congress now usurps control over the whole subject in the ten States, and creates negro constituencies, and vests them with nearly a third of the whole representation in the Senate, and nearly a quarter of the whole representation in the House. The leaders of the Republican party also claim the power by Congressional act to regulate the suffrage in the loyal States, and, without the consent of the people of those States, to alter their constitutions, and involve them in a political partnership with inferior races.

2. Congress, by the methods and means I have traced, usurps control over the representation in the two branches

of the national legislature, and packs those bodies with delegates, admitting or rejecting for party ends, and at length attempting to create a permanent majority by deputies from negro constituencies formed for that purpose.

3. Congress has not only fettered the trade and industries of the country for the benefit of special interests and classes, but it has absorbed many powers and functions of the State governments which are, in the words of Mr. Jefferson's celebrated Inaugural, "the most competent administrations for our domestic concerns, the surest bulwark against anti-republican tendencies;" and it is rapidly centralizing all our political institutions.

4. Congress is systematically breaking down all the divisions of power between the co-ordinate departments of the Federal Government which the Constitution established, and which have always been considered as essential to the very existence of constitutional representative government.

The conviction of all our revered statesmen and patriots is, in the language of Mr. Jefferson, that "the concentration of legislative, executive, and judicial powers in the same hands is precisely the definition of despotic government." "An elective despotism," said he, "was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others."

In violation of these principles, Congress has stripped the President of his constitutional powers over his subordinates in the executive function, and even over his own confidential advisers, and vested these powers in the Senate. It is now exercising the power of removing from office the President elected by the people and appointing another in his place, under the form of a trial, but without the pretence of actual crime, or anything more than a mere difference of opinion.

It has menaced the Judiciary: at one time proposing to

create by law an incapacity in the Supreme Court to act by a majority in any case where it should disagree with Congress; at another time proposing to divest that tribunal of jurisdiction, exercised by it from the foundation of the government, to decide between an ordinary law and the Constitution, which is the fundamental and supreme law. There is reason to believe also that a plan has been matured to overthrow the Court by the creation of new judges, to make a majority more subservient to Congress than the judges appointed by Mr. Lincoln are found to be.

These changes are organic. They would revolutionize the very nature of the government. They would alter every important part of its structure on which its authors relied to secure good laws and good administration, and to preserve civil liberty. They would convert it into an elective despotism. The change could not by possibility stop at that stage.

I avow the conviction, founded on all history and on the concurring judgment of all our great statesmen and patriots, that such a system, if continued, would pass into imperialism. I feel not less certain that the destruction of all local self-government in a country so extensive as ours, and embracing such elements of diversity in habits, manners, opinions, and interests, and the exercise by a single, centralized authority of all the powers of society over so vast a region and over such populations, would entail upon us an indefinite series of civil commotions, and repeat here the worst crimes and worst calamities of history.

It is time for the people to stay these destructive tendencies, and to declare that the reaction from secession toward centralism shall not effect the ruin which secession could not directly accomplish.

Coming back now to the subject of the senatorial representation, I ask you to consider how different it is and how vastly more important, when viewed in the light of such changes in the nature and structure of our government. Senatorial oligarchy.

The inequality of the representation of the people in the

Senate was conceded, as a compromise, on the surrender of State independence and for the protection of State rights. When State rights are obliterated from our system, all the original reasons for such inequality will have disappeared; when all local self-government gives way to centralism, that inequality will become intolerable. The Senate as a mere checking body on the House and on the Executive, in a federal government, itself exercising but limited powers, is one thing. The Senate absorbing — in common with the House — all the powers of the States, all the powers of the Judiciary, and many of the powers of the Executive, and grasping, for itself alone, control over all the officers who carry on the executive machinery, over the army, and over the agencies which collect and disburse five hundred millions a year — is a very different thing. The long tenure and indirect election of the senators enable that body to hold power for a while against the people. If members are admitted or rejected to perpetuate a party majority; if new States are formed, with small populations, for that purpose; if twenty nominees of the three millions of emancipated slaves are brought in, — the body will be for a period practically self-elective. If we are to be governed by a senatorial oligarchy, the people of the great populous States which occupy the vast region stretching from the Hudson to the Mississippi will ask, — Who are to choose the oligarchs?

Usurpation of control over suffrage in the States.

I recur for a moment to the claim made by the leaders of the Republican party that Congress has power to alter the suffrage within the Northern States as well as the Southern, in the loyal as well as the rebellious communities. Mr. Thaddeus Stevens and Mr. Charles Sumner have publicly claimed this power. The "Tribune" has claimed it. Mr. Speaker Colfax has asserted it, and proposed to apply it to Kentucky, Maryland, and Delaware. Their objects and motives are now disclosed.

The "Tribune," on the 16th of October last, exclaimed to its hesitating followers: "For the Republicans are bound to go under (thank God!) if they don't enfranchise the blacks."

Mr. Sumner, in a letter to the editor of the "Independent," avowed the purpose and the motive: —

"SENATE CHAMBER, April 20, 1867.

"MY DEAR SIR, — You wish to have the North 'reconstructed,' so at least that it shall cease to deny the elective franchise on account of color; but you postpone the day by insisting on the preliminary of a constitutional amendment. I know your vows to the good cause; but ask you to make haste. We cannot wait. . . . This question must be settled without delay. In other words, it must be settled before the Presidential election, which is at hand. Our colored fellow-citizens at the South are already voters. They will vote at the Presidential election. But why should they vote at the South, and not at the North? The rule of justice is the same for both. Their votes are needed at the North as well as the South. There are Northern States where their votes can make the good cause safe beyond question.

"There are other States where their votes will be like the last preponderant weight in the nicely balanced scales. Let our colored fellow-citizens vote in Maryland, and that State, now so severely tried, will be fixed for human rights forever. Let them vote in Pennsylvania, and you will give more than twenty thousand votes to the Republican cause. Let them vote in New York, and the scales which hang so doubtfully will incline to the Republican cause. It will be the same in Connecticut. . . . Enfranchisement, which is the corollary and complement of emancipation, must be a national act, also proceeding from the National Government, and applicable to all the States."

Hitherto the great right of the citizen to a voice in choosing his rulers has been safely intrenched in the constitutions of the several States. No legislative power in the land, Federal or State, could touch it. No temporary political ascendency, no fluctuation of parties, could endanger it. The State constitution could be changed only through slow processes, — imposing delays insuring deliberation, and generally requiring several submissions to a vote of the people. To effect a change throughout the Union would require that these processes be carried through in each State separately. But once abdicate this rightful authority of the people of the several States, acting in

their organic capacity; once allow Congress to usurp jurisdiction over the suffrage of the people of the States; once admit that this fundamental right may be changed by a mere enactment of Congress, without submission to a vote of the people, — and no man in any State can tell how soon his vote may be rendered worthless, or how soon it may be taken from him. Mr. Sumner avows that his object is to control the next Presidential election. Adopt his theory; establish the precedent; accustom the people to acquiesce in the usurpation: and you will have a Congressional majority changing the suffrage whenever it may be a convenient means of keeping themselves in power. An ambitious President, with a subservient majority in Congress; in possession of the machinery of the Federal Government; our political system centralized under the popular reaction against the heresy of secession, until the moral force of the States to restrain is gone, — and a supreme control over the suffrage is all that is wanting to complete and consummate a practical revolution in our government. Your future masters may indulge you a while in the forms of election, if they be allowed to make over the constituent bodies as often and as much as they please, letting in and shutting out voters to maintain their ascendency. An addition of nine hundred and thirty-two thousand negroes, — most of them emancipated slaves, without any of the training, or traditions, or aspirations of freemen, who would as soon vote to make their favorite an emperor as to make him a president, — will be a convenient accessory. And when their representatives get into power, who can doubt that they are capable of being made facile instruments of excluding opponents as well as of admitting allies. How do you think Senator Brownlow and his twenty associates would vote on a bill to regulate the suffrage by admitting negroes in New York, Pennsylvania, Ohio, Indiana, or Illinois? How would they vote on a bill to regulate the suffrage by excluding Irishmen or Germans? Do you think they would not assert the superior rights of the negroes born in this country over foreigners? Is it not at least prudent for all who possess the

suffrage to keep the regulation of it where it now is, — in the constitutions of the several States?

One other topic, and I have done. Our civil and social polity, which is rapidly extending over the unoccupied portions of this continent, is peculiar. The ideal to which it is approximating is that of a system of commonwealths in which all are equals before the law, and all adult males exercise the suffrage. Our wise ancestors warned us that this grand experiment in self-government would turn on the intelligence and virtue of the people, and that our efforts to educate and elevate must be commensurate with our diffusion of political rights and political power. It is a great partnership in self-government. Every man yields a share in the government over himself to every other man, and acquires a share in the government over that other man. But, like a partnership in business, or by marriage in the family, the important question is, — With whom shall we enter into so intimate and complex a relation? The American people have always answered that question by founding the State upon the family.

With whom shall we share self-government?

Whatever element could be absorbed into the homogeneous mass, indistinguishable as a drop of water in the ocean, — whatever element could be admitted into the family, which is the basis of society, — has been admitted into the State. Whatever element could never enter the family, and could only exist in society as a caste, separate and incapable of amalgamation with the mass, has been refused admission into the State as a part of its electoral or governing body. That has been the principle. Instances of deviation have happened only where the element was so inconsiderable as to deprive the question of all importance.

We have everywhere hitherto refused to enter into a partnership in self-government with inferior or with mixed races. I remember that twenty-one years ago there seemed to be danger that the spirit of territorial extension would lead some of the Democratic party to favor the absorption of all of Mexico and the incorporation of the populated portions of that country into our system. For the purpose of checking that

tendency, a declaration was prepared by a great statesman of that day, and was made public, to the effect that to hold Mexico as a province would be contrary to the principles of our institutions, and would tend to their subversion; and that the destinies of our great experiment in self-government could not be safely committed to the issue of a partnership in it with the six millions of the mixed races which formed three quarters of the population of Mexico. I may add that, being consulted, I concurred in the measure.

Professor Fawcett, in his recent work on political economy, predicts that immense swarms will yet come to our Pacific possessions from the countless millions of the Chinese. Could we accept into political partnership with us four and a half millions of them?

The Indians were here before us, and before the importations of the Africans. If four and a half millions of Indians still existed here, with nine hundred and thirty-two thousand males over twenty-one years of age, would any man seriously propose to enter into a partnership in self-government with them?

In 1860 the slaves amounted to nearly four millions, and the free colored to nearly half a million. The males over twenty-one years of age, of both classes, were about seven hundred and eight thousand in the ten States, and about two hundred and twenty-four thousand in the other States; making an aggregate of nine hundred and thirty-two thousand.

The great European immigration.

The immigrants who have contributed so much to swell the population of our Northern States spring from the same parent stocks with ourselves. They come to rejoin their kindred. Races have a growth and culture as well as individuals. What a race has been many centuries in accumulating, is often appropriated and developed in an individual life, in the ascent from the humblest origin to the highest attainments of the species. Our accessions are drawn from races which have lived under essentially the same climatic influences with ourselves, which have attained the highest civilization and made the largest progress in the

arts and industries of mankind. They are attracted here by their aspirations for civil liberty or for the improvement of their personal condition; and every aspiration ennobles. They are well represented in all our occupations which call for intellect and culture; and even the portion which come to fill the ranks of raw labor made vacant by the ascent to more skilled and more remunerative employments which our universal education opens to all, show a capacity quickly to follow in the noble competition for improvement. The theme is important and interesting, but I cannot now touch so great a subject. I intended merely to call attention to the one primary fact.

These immigrants enter the American family without the slightest repugnance on either side which can be ascribed to differences of race. All the various motives of choice which operate between individuals of the same race exist; but there is no repulsion of races. They commingle in the family. I cannot discuss what the effect will be upon our future population. The opinion of physiologists seems to be that it ought to form a higher type of mankind. In Massachusetts it appears to be the stay of the population from a decline. In 1865, while the American population was 79 per cent, the children of American parents were but 45 per cent, and of mixed parentage 8 per cent. For every five marriages between Americans, there was one between an American and a foreign-born person; and of these mixed marriages nearly three fifths were foreign males with American brides. The foreign-born residents of Massachusetts are chiefly Irish. The secretary of the Commonwealth, in his last statistical Report, dryly observes: "The domestication of foreign agricultural laborers in the homes of American farmers may be the cause of this."

The social organism. — Immigration.

In our body politic, as in the human system, what can be digested and assimilated is nutrition; it is the source of health and life. What remains incapable of being digested and assimilated can be only an element of disease and death. The question in respect to it is always

this, — whether the vital forces are strong enough to prevail over it and excrete it from the system.

One might carry this analogy farther. In 1790 the group of States north of Mason and Dixon's line, and the group of States south, had each a population rather less than two millions. They differed a little more than seven thousand. After careful examination, I am satisfied that all the superiority which the North gained in population in the seventy years between 1790 and 1860 may be traced to immigration.

I have ever felt the greatest interest in the form of society in which I was born, and have been ready to defend and protect it. As soon as the great development of immigration, which began twenty-one years ago, was apparent as an enduring force, I felt that we of the North could safely trust to it all questions between the rival systems of industry and society which existed in our country, and that the highest statesmanship was to keep the peace between the sections until both should see that a power greater than either had determined the ultimate solution of every such controversy.

The ascendency of the North in the government, and its triumph in the war, are due to the same cause. Of the immigrants who have come here within forty years, from 1820 to 1860, 41½ per cent were males between the ages of fifteen and forty, while but 21½ per cent of our own white population in 1860 was of the same class. In twenty-one years, from Jan. 1, 1847, to Jan. 1, 1868, two millions and a third of males between fifteen and forty have been added to our strength, or about as much as are contained in eleven and a half millions of our population. If the South had succeeded in establishing a separate government, it must still have confronted the same difficulty, and must, by exclusion, have dwarfed itself by our side into impotency, or within fifty years have reproduced the same conflict within its own boundaries.

Whether the renovation of the South must be looked for from the same source, — a constant enlargement of the proportion of the whites, with a diminished rate of natural increase

for the blacks and a continued drift of them toward the tropics, — is a speculation on which I will not now enter. But of one thing we may be assured, — the admission of the inferior races into our political system is simply a question of quantity. As a separate people, I have heard no man profess to believe that they could maintain such a government as ours. There is no experience to warrant such an expectation. The experiment is a failure in Mexico; it is a failure everywhere in South America. The question recurs, — How much of so evil a dilution can we afford? The presence of the race here raises the question; it creates a difficult problem, which ought to be dealt with in a spirit of liberal humanity and of wise statesmanship.

But there are other things besides the rights and interests of the blacks to be considered; other rights and interests to be consulted. There is an alienage more incurable than the alienage of birth. Is the descendant who comes here now of a neighbor or a relative of my ancestor, who came here almost two and a half centuries ago, less to me than the descendant of a barbarian from Africa who came to South Carolina by an act which we now stigmatize and punish as piracy? Our laws require for the immigrant of our own blood, who comes from the most highly civilized nations of Europe, belonging to a race perfected by many centuries of culture, — however great may be his endowments, — a novitiate of five years. The Republicans require none for the emancipated slaves. The suffrage amendment adopted by the Republican majority of our Constitutional Convention enables every one of the nine hundred and twenty thousand now outside of this State to come here, and on a year's residence exercise the suffrage and become eligible to all our official trusts: it invites them to come. The Republicans were not content to confine these privileges to such as are now residents here, or to such as were born here, or to such as have already acquired the suffrage. They extended the offer to the whole class; and they voted down a proposition to impose upon such as might come

Alienage not mainly a question of birth.

into the State a novitiate analogous to that which is imposed on immigrants. They did this while inventing and applying every ingenious obstruction to the exercise of the suffrage by the adopted citizen and by the white race generally.

Probably no large number will come; but that cannot be certainly foreseen. At any rate, it is not the best reason for making a rule that it will probably be inoperative, but, if it were to be operative, could not be endured. As a judgment on the question of the relative fitness of the classes, — which it theoretically is, — it is absurd and unjust.

I deny that the mere place of birth is more important than the nature of the man himself. A man born in the land of our ancestors may become, in every essential characteristic, a native here almost immediately. A man descended from an African may be, after the lapse of centuries, still an alien. If a Mississippi plantation hand has a right to demand of every New Yorker that the two should divide equally the government of both, I should like to be instructed as to the origin and nature of that right. Is it a constitutional right? I answer that the Constitution leaves the whole matter to the States. Is it a natural right? I ask whether he has also a natural right to thirteen times as much voice in the Senate as a New Yorker.

Has he likewise a "natural right" that the State governments be stripped of their constitutional authorities, — and the Federal Executive and the Federal Judiciary, — and that all the powers of human society on this continent be concentrated in Congress, and a disproportionate share of them in the Senate? Has he a natural right that his representation in that body (thirteen times that of a New Yorker) should become a representation so disproportioned in all the governing powers of our country? Might not the New Yorker ask that he wait a little, and have the readjustments on both sides take place at the same time, — at least so far that the natural right of the Mississippi plantation hand should not swallow up all the natural rights of the New Yorker? I demand to know a little further of the quality

of this natural right. How did this Mississippi plantation hand acquire, as against this New Yorker, a natural right to the suffrage denied to this New Yorker's wife, or to his son, if under twenty-one?

I have said that the presence of the race here creates a problem which ought to be considered wisely and humanely. But does it create an absolute right to the suffrage and to eligibility to official trusts? The race is not here by our act. This New Yorker, whose rights and interests are so deeply concerned, did not bring the African here. Let us be just. Neither did the Southern people. That presence here is the fatal fruit of the rapacity of the English Government in a former age, against the persistent remonstrances of Virginia, which was then the South. I deny that the mere fact of that presence here creates such absolute and unlimited rights as are claimed for it to a partnership in self-government, — rights against us who are in no manner responsible for that presence. I deny that it divests us of the right to exercise a reasonable precaution for our own safety. I especially deny that it gives them a right to rule us, lest perchance we may abuse our power over them.

I say there are other rights and interests to be consulted besides those of the emancipated slaves. The rights and interests of that class are entitled to thoughtful care, and no man would rejoice more than myself to see them advance in the scale of humanity. But I think the system adopted by the Republicans is a great mistake even for the welfare of that class. They live in the midst of the white race in their own localities; they must ultimately need good relations with the community of which they are a part. What can be done for them must at last be done through the white race in their localities, which can understand and manage the complicated relations of their condition better than anybody else. The North cannot; the Federal Government cannot. That the white race would not have fulfilled this trust, if allowed, with justice and humanity, in the main, there is no ground to dis-

pute but prejudice and hatred. At any rate, no machinery can long be maintained by us to supervise such relations. To put the freedmen in supremacy over the white race in ten States in order to protect the interests of the freedman, is an absurdity inferior only to the next expedient, of giving them a practical domination in the Federal Government over the whole North, in order to perfect and consummate that protection.

The late "slave power."

The Republicans have educated our people to overthrow what they called the "slave power." Analyze it. What was it? It was the influence which three hundred and fifty thousand heads of families, embracing two millions of the white race, owning slaves, and living intermingled with six millions of other whites not owning slaves, were capable of exercising over public opinion, and thereby upon the government. It gave us Washington, Jefferson, Madison, Monroe, Jackson, Marshall, Clay, and hosts of other statesmen and patriots; and whatever influence could be exercised by it was only through the consent of millions of civilized people of our race. The struggle to overthrow it has cost the whole country a million of lives and four thousand millions of dollars. And now what is it proposed to the people of the great populous commonwealths of the North to accept in exchange, and as the recompense for such immense sacrifices?

The coming negro power.

The political power of the States where slavery once existed will remain, and after the next census will be enlarged by the representation of all, instead of three fifths of the former slaves. That power in the ten States, if the system of the Republicans shall prevail and continue, — at any rate for the next few years, which involve peculiarly all the business interests of the country, — is to be wielded by a few hundred adventurers through the three millions of emancipated slaves; and the centralization of our governmental authorities will cause it to act vastly more upon all our interests. It will give us Hunnicut for Washington, Underwood for Jefferson, and Brownlow for Jackson. Every element of this power would be inferior in morality and intelligence to the

one which has been overthrown, and its influence upon our welfare would be immensely greater. Will the people of our great Northern States accept a domination of such a "negro power," erected on the ruins of such a "slave power?"

I do not ask what will be the consequences on the white race of ten States, — whether the white race will be expelled; I do not ask what will be the effects upon our industrial or commercial interests, or on the civilization of a portion of our country three and a half times as large as the French Empire.

Conclusion.

If the authors of this policy tell you that the white people of the South deserve this infliction, I ask you whether you also deserve it? If, taking counsel of hatred, you think you are making a government for your late enemies, I remind you that you are also making a government for yourselves. Do the twenty-five millions of white people out of the ten States deserve such a government as you are imposing on them?

The masses of the Republicans do not understand the real nature of the system they are contributing to establish. They are misled by party association and party antagonism, by the animosities created by the war, and the unsettled ideas which grow out of the novelty of the situation. The leaders are full of party passion and party ambition, and will not easily surrender the power of a centralized government, or the patronage and profits which are incident to an official expenditure of five hundred millions a year. The grim Puritan of New England — whose only child, whose solitary daughter is already listening to the soft music of a Celtic wooer — stretches his hand down along the Atlantic coast to the receding and decaying African, and says: "Come, let us rule this continent together!" The twelve senators from New England, with twenty from the ten States, would require only a few from Missouri, Tennessee, West Virginia, and from new States, to make a majority.

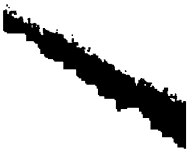
I do not forbid the banns; I simply point to the region which stretches from the Hudson to the Missouri. It is there that the Democracy must display their standards in another,

and I trust final, battle for constitutional government and civil liberty. I invited you to that theatre last year; I come now to bid you God speed!

Every business, every industrial interest is paralyzed under excessive taxation, false systems of finance, extravagant cost of production, diminished ability to consume. You cannot obtain relief until you change your governmental policy. You cannot change that until you change the men who administer your government. The causes of the dangers in respect to our political institutions and civil liberty and the causes of your suffering in business are identical. For the safety of the one and for the relief of the other you must demand of the people a change of administration as now carried on by Congress.)

XXII.

In the summer of 1868 the Democratic National Convention met in the city of New York and nominated its presiding officer, Horatio Seymour, of New York, as candidate for President, and Francis P. Blair, of Missouri, as candidate for Vice-President. The Republican party had already nominated Ulysses S. Grant and Schuyler Colfax as its candidates for the same offices. In the progress of the canvass and on the 24th of September of that year Mr. Tilden addressed his old neighbors in Columbia County upon what he regarded as the fact of supreme concern to the voters at the then approaching election, — the enormous burdens in the form of taxation imposed by the Republican party upon the productive industry of the country, burdens which he denounced as needless, exhausting, and corrupting, and from which he saw no relief but in an entire change of administration. At a later stage of the canvass the same view was elaborated by him in a paper elicited by the Honorable Isaac Butts, of Rochester, which follows the speech.



TAXATION IN THE UNITED STATES,—

ITS ENORMOUS BURDEN UPON THE PRODUCTIVE LABOR OF OUR COUNTRY; ITS CONTINUANCE UNNECESSARY; HOW THE EVIL MAY BE REMEDIED BY A CHANGE OF MEASURES AND OF MEN.[1]

MR. CHAIRMAN AND GENTLEMEN, — It is with a pleasure not untinged with something of sadness, that after a long interval I stand once more among the assembled Democracy of the County of Columbia. I feel like a man revisiting the spot where cluster the dear and tender associations of home; and looking about him to see his friends and his kindred. It was here, in one of the loveliest of your beautiful valleys, that my eyes first opened upon the light of heaven; and here, after a period of many years of various experiences, come back upon my heart all those interesting and never-to-be-forgotten associations which belong to our youth.

It was here that I first learned to take an interest in the great concerns of our common country, and was taught — in precept and example by him to whom I owed my existence, and, largely, whatever endowments of intellect I possess — that it is the first of social duties for a citizen of a republic to take his fair allotment of care and trouble in all public affairs. It was amid these scenes that I formed an acquaintance at the house of my father with the great statesmen of the Jacksonian era who did so much, so wisely, and so well for our country in their day and generation. At his house I met Martin Van Buren, Silas Wright, William L. Marcy, Azariah C. Flagg, and many others whose names are familiar

[1] Speech delivered at Chatham, Columbia County, N. Y., Sept. 24, 1868.

to you all. I also saw in his society Edward Livingston, an ornament of this county, in which he was born, as was also his great brother, Chancellor Livingston; and I saw here also Albert Gallatin, who, although of foreign birth, was an American in all his ideas and tastes. Gentlemen, I have come back among you to-day to plead for those institutions which here in my childhood I learned to revere, which are the great traditions of American free government, and which I fondly hoped in my early years would prevail everywhere upon this continent, and secure prosperity and happiness to our people evermore. These are times that give concern to us all; they are times that create anxiety and disquietude as to the future of our country. And it is because, when most of the illusions of life are past, my mind still clings to that illusion, if an illusion it be, — I would fondly believe that it is no illusion, — of the greatness and glory of my country as the home of a prosperous and happy people, and as the promised land of the toiling millions, that I have come again among you to present to you the views which I entertained when I left you, and which I still cherish, as to what are our duties in respect to the public affairs of our country. I am glad to see that so many of you have gathered on this occasion; I am glad to be informed that in this audience there are so many farmers. It was among the farmers in Columbia that I took my first lessons in politics. It was in the simple habits, moderate tastes, and honest purposes of the rural community that I was accustomed in my youth — and I have not got over that habit — to trust for the welfare of our country. I am glad once more to address an audience composed of farmers. It is from these populations that we must largely hope for whatever of future is reserved to our country; and I am rejoiced that I have to-day the pleasure of meeting so imposing a representation of them.

Taxation in the United States.

I wish, my friends and fellow-citizens, to call your attention as briefly as I may to a topic of great and growing interest to us all, — I mean the state of taxation in this country. To-day we are said to have peace in

this country, and yet we have all the costly arrangements and we have the crushing taxation of war. During the last three years you have been called upon to pay for the Federal Government an average taxation of five hundred and twenty millions of dollars a year, or fifteen hundred and sixty millions for three years. At the same time you have been called upon to pay for the purposes of the localities about half that sum in addition, making from seven hundred and fifty to eight hundred millions of dollars for each year. Now compare for a moment those taxes with what we used to pay in 1860 and 1850. In 1860 your taxes, Federal and State, were about one hundred and fifty-four millions all told. In 1850 they were about eighty-three millions. They have run up from that figure to these monstrous and appalling amounts, and they bear heavily upon every man's income, upon every industry and every business in the country, and year by year they are destined to press still more heavily, unless we arrest the system that gives rise to them. It was comparatively easy, when values were doubling under repeated issues of legal tender paper money, to pay out of the froth of our growing and apparent wealth these taxes; but when values recede and sink toward their natural scale, the tax-gatherer takes from us not only our income, not only our profits, but also a portion of our capital. We must arrest this system, or all that has made this country great and glorious, and that has distinguished it from the empires of the Old World in the beneficent operation of our political and social system upon the masses of the people and upon the industrious millions, will have disappeared, and we shall remain in the history of mankind "to point a moral or adorn a tale."

Amount of the Federal taxes.

I invite you to look the evil in the face. Confront it, understand it; you will then be ready to adopt the remedy. I hold in my hand a table showing how much has come into the Federal Treasury from the pockets of the people during the three years of nominal peace which have elapsed. I do not say how much has been drawn from

the pockets of the people. That sum is vastly greater than what has come into the Treasury. The table begins with the fiscal year July 1, 1865, — nearly three months after the surrender of Lee practically closed the civil war. The first two years are computed from the Annual Reports of Secretary McCulloch. The last year is made up from the admissions of the Special Commissioner, in his letter designed to whitewash the prodigal and profligate expenditures of the Republican Congress.

Receipts into the United States Treasury, other than from loans, for the three fiscal years from July 1, 1865, to June 30, 1868: —

	Report of the Secretary of the Treasury, July 1, 1865, to June 30, 1866.	Report of the Secretary of the Treasury, July 1, 1866, to June 30, 1867.	Special Commissioner Wells's Letter, July 1, 1867, to June 30, 1868.
Customs in gold	$179,046,651	$176,417,810	$163,500,000
Lands	665,031	1,163,575	
Direct Tax	1,974,754	4,200,233	2,800,000
Internal Revenue	309,226,813	266,027,337	193,000,000
Miscellaneous	67,119,369	42,824,853	47,000,000
Total	$558,032,618	$490,633,808	$406,300,000
Add premiums on gold received for customs, 40 per cent	71,618,660	70,567,124	65,400,000
Deduct premium on gold sold	41,446,101	27,227,937	25,000,000
Balance	$30,172,559	$43,339,187	$40,400,000
Total	$588,205,177	$533,972,995	$446,700,000
Total for three years			$1,568,878,172
Average for each year			522,959,390

I have not had leisure to collect the data for a complete investigation of the sum of the State, county, city, and town taxes throughout our country; but I have examined enough to be sure that it is at least two hun-

Amount of the local taxes.

dred and fifty millions of dollars, and that probably it is more. I admit that some of the services for the people rendered by the local authorities are not governmental,—such as furnishing light and water in the cities,—and might be deemed the proper expenditure of individuals; but their cost comes none the less from the income of the people, and consumes their surplus. The enormous growth of these taxes, and the cause of it, are illustrated by Amasa Walker in his recent book on political economy. Mr. Walker was a Republican member of Congress from Massachusetts, and is a lecturer on public economy in Amherst College. He says of these local taxes: "Before the rebellion the rate in Massachusetts was seldom less than sixty cents, or more than one hundred cents on a hundred dollars; but such have been the expenditures caused by the war that few now have a less rate than one hundred, and some have been as high as three hundred and fifty cents on the hundred dollars."

Aggregate of our present taxation.

The immense aggregate of seven hundred and fifty or eight hundred millions of dollars is our present annual taxation.

Compared with our taxation in former periods.

I take the smaller sum; it is less than the truth. Compare it with the taxation of 1860 and 1850, as shown in the censuses of those years.

	Taxes, 1865–1868, Currency.	Taxes, 1860, Gold.	Taxes, 1850, Gold.
Federal	$500,000,000	$60,010,112	$40,000,000
Local (State, County, City, Road, Poor, etc.)	250,000,000	94,186,746	43,000,000
Total	$750,000,000	$154,196,858	$83,000,000
Population	35,500,000	31,443,321	23,191,876
Federal, per head	14.09	1.91	1.72
Local	7.04	2.99	1.85
Aggregate	21.13	4.90	3.57

I take Great Britain and France, the two most wealthy nations in the world, with populations as large as ours, and maintaining the most costly governmental establishments, excepting our own, which have ever existed among mankind. The population of Great Britain approaches nearly to 31,000,000. That of France was 38,067,094 in 1866, and may be now about 38,300,000. Ours was estimated by Mr. Elliott for Mr. Wells as 36,000,000 in 1867. He allows for the retardation during and consequent on the war some 2,500,000. I inspected the census of some of the States a year or two ago, and the impression left on my mind is that the growth of our population is over-estimated by Mr. Elliott.

Compared with the taxation of other countries.

The actual payments out of the British Exchequer for the three years ending March 31, 1868, were on the average of the period sixty-six and one third millions of pounds a year, or $321,053,333. Professor Leone Levi estimated the taxes for the poor, for highways, repairs of churches, local improvements, turnpike tolls, etc., in 1858, at £12,000,000. Mr. Gladstone estimated them in 1861 at £18,000,000. Taking the mean, we have £15,000,000; that would be $72,600,000. The total is $393,600,000.

England.

The ordinary expenditure of France for the year 1867 was 1,769,057,169 francs, and the extraordinary and supplementary expenditure, 133,154,201; making in all 1,902,111,370 francs. This is equivalent to $353,792,714.

France.

TAXATION PER HEAD.

The amount per head of the population is —

England, general	$10.37
Including local	12.69
France	9.24
United States	21.13
If you compute ours at $800,000,000 it would be	22.54
If you reduce this sum to gold at $140, it would be	16.10

You must not forget that in this country the State governments perform many of the functions which in England and France are performed by the national governments. All legis-

lation, all administration which relates to the personal rights of individuals, their property and business, is done by the State governments; and they also supply all the ordinary judicial tribunals. The Federal Government is relieved of those duties and expenses. It was to be a simple and cheap machinery for managing our foreign affairs and certain specified objects of common interest between the States. It is by a perversion of its character from what our fathers intended that it has become a more costly machinery than the imperial governments of the two richest and most powerful monarchies of modern times, — more costly than the parliamentary government of England, with her army of two hundred thousand regulars and her other auxiliary forces, and with her navy, which rules the seas; more costly than the despotic government of France, with her army of four hundred thousand men in her peace establishment. Fellow-citizens, consider for a moment the figures which represent your taxation for the last three years; they are so vast that the mind does not readily grasp them. I will illustrate their appalling amount.

Three years taxation is twice the cost of our forty thousand miles of railroad.

You have in this country, in the last thirty years, constructed forty thousand miles of railways. They are represented by sixteen hundred millions of dollars in stock and bonds. That is greatly above their real cost. They have not cost more than twelve hundred millions; perhaps not more than ten. In the last three years — falsely called years of peace, if they are to be judged by the enormous expenses which have been imposed upon us — there have been taken from us in taxes, by the various departments of the government, almost twice the cost of all those forty thousand miles of railways, counted in the money values of the times when they were constructed. Try another illustration.

Three years taxation almost equal to our national debt.

Your public debt to-day is about twenty-five hundred millions. Your taxes have been in three years from twenty-two hundred and fifty to twenty-four hundred millions of dollars — almost the whole sum of the national debt. Try another illustration.

I made to-day, on my way here, putting the books for that purpose into my bag, a little table representing a comparison between our taxes for three years and the whole aggregate amount of all the exports of the country during the same period, beginning July 1, 1865, and terminating on the 30th of June last. What do you think the result is? Why, that the Federal taxes for three years exceed by twenty odd millions the whole amount of your foreign exports during that time. You boast that upon your broad and fertile prairies you raise cereal products, — wheat, and corn, and other grains, — by which you feed the famishing populations of the Old World; and you feel a sense of pride that you have constructed these forty thousand miles of railway with which you convey those products of agriculture to the seas. You felicitate yourselves that you are the greatest gold and silver producing country in the world. Take all your gold and all your silver; take all your tobacco, take all your cotton, which last year was two hundred and two millions, and the year before two hundred and eighty millions; bear the cost of transporting them to the seaports and delivering them to the foreigner; rake and scrape this continent from the Atlantic to the Pacific, from the Lakes of the North to the Gulf of Mexico, for exportable products of every kind, for everything that will sell to the foreigner; bear the charges of transporting those products to the seaports and delivering them in the vessels in the harbors of those ports, — and what have you done? Why, gentlemen, you have paid only eight months of your taxes with all the yearly exportable products of this country.

National taxation more than national exports.

RELATIVE AMOUNT OF OUR EXPORTS AND TAXES.

	Domestic Exports.	Federal Taxes.	Deficiency.
July 1, 1865, to June 30, 1866 .	$550,684,277	$588,205,177	$37,520,900
July 1, 1866, to June 30, 1867 .	440,838,834	533,972,995	93,134,161
July 1, 1867, to June 30, 1868 .	453,594,748	446,700,000	(Excess.) 6,894,748
Total	$1,445,117,859	$1,568,878,172	$123,760,313
		1,445,117,859	
Deficiency of exports to pay taxes		$123,760,313	

Of these exports there was of specie, —

1865–1866		$82,643,374
1866–1867		54,976,196
1867–1868		83,661,161
Total		$221,280,731
Premium at 40 per cent		88,512,292
And of merchandise from Pacific ports	$34,446,111	
Premium at 40 per cent		13,778,444
Total premiums		$102,290,736
Final deficiency		21,469,577

RELATIVE AMOUNT OF EXPORTS AND TAXES IN OTHER COUNTRIES.

England.

Exports in 1866	$1,155,825,393
National taxation in 1865–1868	321,053,333

France.

Exports in 1866	$760,182,000
Imperial taxation in 1867	353,792,714

SUMMARY OF PROPORTIONS.

United States — Exports less than federal taxes.
England — Exports nearly four times the national taxation.
France — Exports sixty millions more than twice the taxation.

PROPORTIONS, INCLUDING LOCAL TAXES.

You add $72,600,000 for England, and $250,000,000 annually for the United States, for local taxes, which is less than the true amount.

The comparison will then stand thus: —

United States — Exports two thirds of the taxation.
England — Exports about three times the taxation.
France — Exports over two times the taxation.

I appeal to every man who hears me, whatever may be his politics, whether this condition of things can continue without impoverishing the whole community. I say that it cannot; and I say that the sooner you bring this condition of things to a termination, the better for you all.

Let me interrupt myself a moment to talk with you as citizens of New York. On a former occasion I addressed the Democracy of this county in protest against a forty-million debt for the State of New York, many years ago — a quarter of a century, and more, I am afraid. Mr. Opdyke, a Republican, a thoughtful man, a writer on these subjects, made a computa-

tion last year of the amount of Federal, State, and local taxes which the people of this State were paying, and he put it as a moderate estimate on the taxes of the previous year at one hundred and eighty million dollars, — a moderate estimate, because he included but a fifth of the Federal taxes, while he thought we pay one quarter. Put it at one hundred and sixty million dollars, and it is then four times the forty-million debt, wrung from the labor and industry of this State every year of our lives. Why the Erie Canal originally cost seven million dollars. It immortalized Clinton to carry our people in favor of that project. Mr. Jefferson, from his retirement, said that New York had transcended his ideas of what was possible in completing so early so large an enterprise. But now every five days this Federal Government spends seven millions, — every five days it spends the cost of the Erie Canal. Every two weeks there falls upon the labor of the State of New York alone, the cost of the Erie Canal!

Incidental evils.

Fellow-citizens, this is not all. These taxes carry with them other incidents, which greatly increase their burden. They fall most heavily upon men of small incomes, the proceeds of whose labor and industry are consumed to support themselves and their families. Every man who has attained a situation of comfort and prosperity can in some way stand them. But take the poor man, — take the man not poor, whose annual income is consumed in his annual support, — and he pays a most disproportionate amount from his earnings or income for the taxes levied upon the country. It is not for myself that I speak to-day to you, yeomanry and citizens of Columbia; it is for you, and because I have cherished from my childhood, and still cherish, the thought that America is to be the home of its people, and not a state in which the wealthy are prosperous at the expense of the toiling millions. It is because I still cherish the belief that America is to be what in my youth I fondly believed it, — the home and refuge of the man who spends the toil of his year for the maintenance

These taxes fall peculiarly on labor.

of his family and himself, and is able to reserve but little at the end of the year.

Enhanced by profits.

This is not all. I brought along with me a volume of the "Merchant's Magazine," containing in the May number an article on "Economy of Taxation," by Amasa Walker, late a Republican member of Congress from Massachusetts. He shows how the taxes come down as a part of the price of the articles on which they are charged, growing heavier and heavier with profits of wholesaler and retailer, until they fall upon the consumer with a doubled weight. He computes that eighty million dollars are paid by the consumers in this way, on about our present amount of customs; that for every dollar which goes into the public treasury nearly sixty cents additional comes out of the people who do the work of our country.

Increasing the cost of production.

Even this is not all. These taxes, when laid on imports in the manner in which they were laid in the Congressional carnival of manufacturers which framed our present tariff, cause a misapplication of industry that charges on the consumer what neither the Government is able to collect as taxes, nor the manufacturer to appropriate as profits. They lessen the productive power of human labor as if God had cursed it with ungenial climate or sterile soil.

Obstructing invention and economy.

I refer to another Republican authority, the "New York Evening Post," for the assertion that the internal revenue system is complex and bungling, and mischievous and vexatious to all business and all industry. It puts labor in a strait-jacket, clogs all the processes of production, and represses invention and improvement.

Creating fraud, peculation, and extortion.

Lastly, I call Republican witnesses to prove that the internal revenue system discriminates against honesty and in favor of fraud. Mr. Commissioner Wells has, in each of his Reports for the last three years, brought out the fact, and repeated it, that there does not go into the public exchequer over one half of the taxes which are levied. We have introduced a system which puts a penalty of the for-

feiture of all their business upon whole classes unless they will evade the public revenue, — which invites the men who should pay the tax, and the officers who should collect it, into a partnership to divide it between them! I could refer you to authorities on this subject, if time would allow.

The cost.

We can compute what the indirect cost of this system is to the productive industry of our country. Is it extravagant to conjecture that it is, in the aggregate of these various forms of mischief, equal to all which goes into the public treasury? Is it extravagant to suppose that the burden upon labor is doubled? I have been all my life a student of these subjects. It is now eight and twenty years since I made a speech upon it to an audience of the farmers of Columbia County; and in that speech I warned them against the British system, and advocated the American system. Little did I think, when in the first flush of youth I scented danger from afar, — little did I think that at the high noon of life I should again stand before an audience of the same county, my old friends and fellow-citizens, and tell them that America had transcended in these evils and these wrongs the example of monarchical England, against which I then warned them. Still less did I think that while she had been enfranchising industry and trade, we should have gone back toward the ignorance and barbarism of the worst governments in the worst ages.

In my early youth, when I first gave attention to such subjects, the wail of the working-men of England was heard across the ocean. Mr. Gladstone, in a recent speech at Glasgow, recurred to the situation fifty years before, and said that then two in every six pounds of all private incomes had been taken away by the Government, and congratulated the people that at the time he spoke but one in every nine pounds was taken for such purposes, — referring, I presume, to the national taxation, which is at about that rate. Through a whole generation and more, the British people struggled with their burden; and it was long before the growth of population and capital and of

the productive powers of man, vastly increased by modern machinery, by the introduction of railways to cheapen exchanges of products; aided, perhaps, by some general rise of money-values, lightening the relative pressure of debt; and lifted up, as Mr. Gladstone himself tells us in another speech, by a revolution in the financial policy of England, which repealed the corn-laws, and in some degree enfranchised her industry and trade, — it was long before these beneficent causes prevailed.

The situation.

Fellow-citizens, this is the situation. What are we to do? I appeal to you all to tell me whether you know any business which to-day is prosperous. The farmer — for I address many such — is probably to-day better off than almost anybody else; but is he prosperous? And how is he to be when, a little while hence, the prices of his products come down to their usual figures? How is he then to answer the demands of the tax-gatherer when he makes his annual call? Fellow-citizens, day by day, month by month, and year by year, this cloud is settling around you more darkly than ever.

The cause.

Inquire a moment what is the cause of it. Extravagance everywhere, I admit; but chiefly the military system which you keep up in a time of peace. I have in my pocket a table of these expenditures for the three years past. What do you think they amount to? Six hundred and seventy-five million dollars!

MILITARY EXPENDITURES DURING THREE YEARS OF PEACE, — 1865-1868.

	War.	Navy.	Pensions and Indians.	Total.
Report of the Secretary of the Treasury, July 1, 1865, to June 30, 1866.	$284,449,701	$43,324,118	$18,852,416	$346,626,235
Report of the Secretary of the Treasury, July 1, 1866, to June 30, 1867.	95,224,415	31,034,011	25,579,082	151,837,598
Wells's Letter, July 1, 1867, to June 30, 1868.	123,246,648	25,775,502	27,882,676	176,904,826
Total	$502,920,764	$100,133,631	$72,314,174	$675,368,659

Now it is said that some of this is arrears incurred before that period began. I have left out all the quarter previous as a set-off for that. The expenses for that quarter were: —

APRIL 1, 1865, TO JUNE 30, 1865.

War.	Navy.	Interior.	Total.
$414,196,277	$31,273,494	$1,625,453	$447,095,224

Wells and Atkinson.

Mr. Atkinson, under Mr. Wells's prompting, claims that $400,000,000 of the expenditure for military purposes made during the fifteen months beginning April 1, 1865, was for arrears payable on the 1st of April. This is merely their estimate of it. It is all they ventured to estimate. If they could have claimed more, they would have done so. They are bad witnesses that it was so much, but good witnesses that it was not any more. But there are other things which these gentlemen do not mention. Mr. Wells, if he cannot reduce the amount, calls part of the items by a different name. He calls them extraordinary expenditures. Extraordinary in amount they are; but ordinary if you consider the certainty and regularity of their recurrence. Mr. Wells, in his letter, while he utterly fails to establish any deduction, and is compelled to admit $123,000,000 as the cost of the War Department for the last year, now just closed, fails to mention the additions which ought to be made to show the true cost of the system.

I should like to cross-examine him as to four things: —

Interrogatories to Mr. Wells.

1. How much property was there on hand which was converted into money and taken out before the statements we have were rendered?

2. How much of such property, which forms a part of our expenditure or debt before this period, has been consumed by the military establishment since, thus lessening the amount which would otherwise have been expended?

3. How many payments, where the liability has accrued and become fixed, have been deferred beyond the 30th of June last, when the period closes, — deferred under the motive

which the War Department has to show its expenses as small as possible?

4. How much has been omitted from appropriations in order to make a good show until the election, which will have to be paid hereafter; and how much which it is intended to grant after the election?

It is difficult to get information on these subjects. I did, however, after inquiring in vain, by comparing the Treasurer's accounts with the Register's, find out these items for 1866: —

Known understatements.

Captured and abandoned property	$13,145,510.84
Confiscations	97,339.03
Prize captures	3,310,248.17
War and navy credits, chiefly sales of material	25,351,073.33
Total	$41,904,171.37

These items are taken out before the accounts I have referred to for the amount of the military expenses are made up. They are in addition to the other enormous sums.

Accounts changed to conceal expenses.

Nay, more. So anxious are Congress and the War Department to conceal from the people what they are spending, that they have changed the system of accounts. They have repealed, as to the War Department, the wise and proper law which has been standing on our statute-books for twenty years, and which required all receipts to go into the Treasury before they are consumed, so that we may know truly what becomes of our money and what we are spending. I cite Mr. Treasurer Spinner to prove this assertion: —

"The receipts into the Treasury are decreased by the repeal, so far as the War Department is concerned, of the law of March 3, 1849, which required the payment of the gross amount of all moneys received for the use of the United States into the Treasury, without any abatement or deduction.

"The books of this office now, as at all other times, show the balance of actual receipts over authorized expenditures, which, at the same time, is the amount of money in the Treasury." [1]

[1] Report of Treasurer Spinner, Aug. 21, 1867, p. 123.

I have taken pains to ascertain from the Treasury Department, by authentic evidence, that you are now paying at the rate of $11,000,000 a month for your army in a time of peace. I have evidence with me that from the first day to the last day of the month of August, now just past, the warrants delivered at the United States Treasury for army expenses were $11,800,000; that is besides pensions, besides the navy, and besides the interest on the public debt and the general expenditures of your government. I say, fellow-citizens, that there is no tendency in these expenses to decrease.

There is no reduction now.

At the close of the war, in the year 1865, having known and esteemed Mr. McCulloch, the present Secretary of the Treasury, before he entered public life, when he came to New York I called on him to pay my respects; and I said to him: "There is no royal road for a government more than for an individual or a corporation. What you want to do now is to cut down your expenses and live within your income." I would give all the legerdemain of finance and financiering — I would give the whole of it for the old, homely maxim: "Live within your income;" and what I ask you to do is that by your voice, joining with the voice of the people from all parts of this country, you will command the Federal Government and all State governments to live within their incomes.

The remedy.

Now, fellow-citizens, how is this to be done? Can it ever be done without a change of men and a change of measures? If there be a Republican here in this vast audience (and when I was a young man, and addressed the citizens of the County of Columbia, I used commonly to have about one of that school of politics to two Democrats. They always used to attend meetings where I spoke. I was always glad to have them. I always knew and recognized the fact that our differences of opinion did not involve any breach of honesty or of patriotism on the part of those who so differed. It is good for us to meet and talk over the concerns of our

We must have a change.

common interest — for we have a common interest; and what is my interest to-day is your interest, and is the interest of every Republican in this land, if he would understand it), — if there be a Republican present here to-day, I ask him: "Tell me, if you can, how you are going to change this system without changing Congress; how you are going to change it without changing the men who carry on the administration of the government." I do not mean to say that, so far as the masses of the Republican party are concerned, they are not just as honest and just as well intentioned as we are; but unfortunately they are represented by men who are totally incapable of changing the wasteful, ruinous, and corrupt system under which the country is going on, or rather under which the country finds it difficult, and by and by will find it impossible, to go on at all. They cannot change that system because they have all the habits of the war on them, and they think that they are fighting the war still, and you cannot get it out of their heads. Now I say, gentlemen, that the habits, methods, ideas, and systems that are suitable to war are not suitable to peace. It is time that you discard them from your minds if you would undertake the works that are meet for peace. With the leaders of the Republican party — with the men who are interested in preserving their own power — their whole capital stock-in-trade is the traditions of the war. They have nothing else to talk about. While the country is languishing, while its industries are perishing, they are busy in re-exciting the misunderstandings, passions, and prejudices that led to the war, and enkindling anew the hatreds engendered by the war, and have nothing else to say to us who want repose and that revival of industry and production, and that relief from taxation which should belong to a time of peace.

Mr. Atkinson.

Fellow-citizens, a few days ago, under Mr. Wells's auspices, they induced Mr. Atkinson in Massachusetts to make a speech, in which he states that the real expenses of our government are not as great now as they were ten or fifteen years ago. How does he make it out? Why, he

takes the entire war expenditures of fifteen months and calls them debt — and calls them a debt due before the fifteen months began! And then he says that he has been mistaken, that Commissioner Wells has been mistaken, that Mr. Secretary McCulloch has been mistaken, in saying that the public debt was about twenty-five hundred millions of dollars — that it was really eight hundred millions more, and that what we have been paying, and what has been so burdensome to us, has been this additional amount of public debt, of which he has just made the discovery. As I took my way along in the cars this morning, I read his speech, and I was curious to know what it was that he considered the public debt due on the 1st of April, 1865. What do you think it was? First, it was all the expenses of the Army and Navy Departments for that three months, and for twelve months afterward, every cent. He says in the body of his speech that about four hundred millions of dollars of the seven hundred and fourteen millions were on old scores. But when he comes to make up his accounts, he puts the whole seven hundred and fourteen millions of dollars down to that account; and if his account is true, it has not cost us a cent to have an army and a navy for all that time! We have been merely paying the old debt; and that debt we owed on the 1st of April, 1865, before a cent of it was contracted! Another of his items was the Freedmen's Bureau for fifteen months. That was all debt that we owed before the fifteen months began! I found another item. What do you think that was? Why, a year or two ago Congress passed a Bill called a Bounty Bill. It was not to pay any bounties that had been granted before; it was not to fulfil any contract that had been made before: but they said that the soldiers who volunteered early in the war, when they went forth willingly to the battlefield, ought to be paid as much bounty as the men who volunteered at the close of the war, when labor was scarce and they went unwillingly. They said there was a certain equity in having an equalization of this sort. They voted what it is supposed will be something like

two hundred and fifty millions of dollars — to whom? How much do you think ever went to the soldiers? How much do you think had been bought by bounty sharks, by claim agents, by speculators on the earnings and industry of the masses of our people? How much do you think was held by members of Congress and their associates, dependents, and friends? I do not know; perhaps nobody will ever find out. But I will tell you that among the most intelligent men I know the opinion is that far more went to these classes than ever reached any of the soldiers to whom it professes to be a gratuity. Even to them it was a gratuity. It had not been stipulated; it had not been agreed upon. And now that item turns up — thirty-eight millions of dollars last year; it turns up in Mr. Atkinson's statement, under the auspices of Mr. Wells, — as a debt due before the 1st of April, 1865, and now just recognized. And therefore he says our expenses are not much, we are merely paying our old debts! I shall trouble you to listen to me for a moment longer while I call one witness — a Republican witness — on this subject. I have brought the book along. I shall read to you ten or twenty lines from it. What book do you think it is? Why, fellow-citizens, it is a report made under his own signature, under the sanction of his official responsibility — by whom? By this same Special Commissioner Wells.

Wells's answer to his own letter and to Atkinson's speech.

Now are you disposed to listen and hear what Mr. Wells said on this subject before he began this business of whitewashing the extravagant and profligate expenditures of this Republican Congress? He said: —

"That an absolute necessity existed for increasing the ordinary expenditures of the last fiscal year (1866–1867) 206 per cent, or one hundred and twenty-nine millions above the expenses of the fiscal year 1860–1861, or 247 per cent above the average of the decade from 1851 to 1861, may well be doubted. The ordinary expenditures for the army and navy — preparations for war in a time of peace — are the mill-stones which hang round the necks of the nations of

Europe, press them annually deeper into debt, and render the emergence of the great mass of the people from poverty annually more and more difficult."

This is what Mr. Wells said a few months ago. He said what is true, and no more than true, — what every public economist has said, — that the calamity and curse of the monarchies and military despotisms of the Old World is that they wring from labor the last dollar of its earnings to support their military establishments. And yet to-day the military establishment of the United States costs one hundred and thirty millions a year in greenbacks, besides pensions; while that of England, with two hundred thousand men in her army, — in England, in Scotland, in Ireland, in her colonies, in India, ruling over one hundred and fifty millions of dependent people, — was but seventy-four millions of dollars, including pensions, as shown by the official statement. The cost of the standing army of France on its peace establishment was less than sixty-five millions of dollars for maintaining four hundred thousand men. Thus our army expenditures, if you include pensions, were in all ten millions more than those of the two hundred thousand men maintained by England, and the four hundred thousand men maintained by France together, giving only the difference between greenbacks and gold. I want to know if you do not think something of this is stolen by somebody. Let us go on with Mr. Commissioner Wells. "These same items," said he, "to-day constitute the bulk of the ordinary expenditures of the United States." He had not then found out that it did not cost us so much per year now as it did in Buchanan's time, and that all the rest was in payment of an old debt. "These same items," he says, "to-day constitute the bulk of the ordinary expenditures of the United States; and as their influence is the same in degree as that already pointed out, it is here that the necessity for a reform is most urgent, while its realization at the same time does not appear difficult." He says that these expenses are unreasonable and unnecessary, and that it is here that reform should be

made, and that reform is most urgent and not difficult to make, — this same Mr. Wells who writes this letter whitewashing these expenditures, and who stands by and prompts this speech of Mr. Atkinson, and furnishes him particulars, and says we are not spending now so much as we did in Buchanan's time, and that all the rest is an old debt! He continues: —

"Thus, for example, the country is subjected to a present annual tax of over thirty millions for the support of a navy in a time of peace, when an average expenditure of only twelve millions for this purpose was considered ample from 1851 to 1861. And as respects the army, although the existence of an Indian war and the problem of reconstruction have rendered a large increase of expenditure unavoidable, yet an increase so large as sixty-six millions, or upward of 290 per cent, seems excessive."

Now, fellow-citizens, I call your attention to these points. First, at the time he wrote this he counted the expenses for the army as eighty-three millions, while last year they were in all one hundred and thirty millions. Last year he himself admits that they were one hundred and twenty-three millions. If the whole truth were known, they were probably much more than either of these sums. He said when they were eighty millions, thirty millions less than they were last year, that they were excessive, and that they called loudly for reform, and that reform was not difficult. And now he says we are merely paying an old debt!

Reconstruction the cause.

Again, you observe that in this passage he says that while the Indian war is one cause of the excessive expenditure, another cause is the "problem of reconstruction." He admits and declares, what every Democrat knows, and what every Republican feels himself urged to admit, that the fatal and ruinous policy of this Government with the Southern States is the root of the whole evil; that when you have forsaken the American system of leaving every State to govern itself and manage its own affairs; when you are attempting to govern almost one half of the territory of this Republic by military force; when you have gone back to the same

error that has ruined the prosperity of every European country, —you have European calamities and European expenditures. If the American people are blind enough or indifferent enough to permit this system to continue, I can say that they deserve nobody's pity. If, forsaking the traditions of their fathers,—if, forsaking that system which Washington and Jefferson and Madison bequeathed us, — they shall attempt to give to two thirds of this Union the authority to rule one third by the sword or by fraud, they deserve to pay these taxes, which are the cost of that luxury; and I thank God that they have to pay them. I thank God that this generation cannot lie down and see perish all the grand principles of American liberty and of constitutional government on this continent, and sleep easily and quietly in their beds. I thank God that the tax-gatherer will persecute them into a consideration of what the principles of their fathers and of human liberty are. Fellow-citizens, this is the question.

The issue.

Do you wish to have peace throughout the South, will you allow its industries to revive, will you allow it to help you pay the necessary taxes, will you disband your army, cut down the hordes of unnecessary and corrupt officials that charge you with these expenses, and return to the simple and pure system of your fathers; or will you go on till the tax-gatherer haunts you, — the spectre of a betrayed and ruined country? That is the question.

The pretences — a new war.

The pretence is that the South will go into another war. Nothing was ever more ridiculous. I tell you to-day that the South is so subdued and so exhausted that she will submit to almost anything, — that she will submit to what no man ought to, — that she will submit to what would have made the blood of your fathers curdle in their veins if they thought you yourselves would consent to submit to it. The pretence that there is any danger of a new trouble from the South is a mere device to frighten the people into continuing these arbitrary, false, untrustworthy, and corrupt servants longer in power.

The next pretence is that the South will not deal fairly with

the negro. Fellow-citizens, it is not here, it is not among our Republican friends, that the negro can find safety and refuge. The men of the South, who have lived in the same community with the negro, with whom he is acquainted, with whom he has relations, are better custodians of his safety and his prosperity than we are. We cannot stretch our hands a thousand miles to establish a police over the relations of the white man and the black man in Mississippi or Louisiana. We may spend one hundred or two hundred millions a year in trying to do it, but we cannot. And the vagrant men who go down from the North as the particular friends of the negro, and who seek to come back as representatives in Congress or in the Senate, not to govern the negro alone, but to govern us — those men have all the weaknesses and are subject to all the errors and crimes that belong to humanity when it has irresponsible power. To-day what do we see? Why, we see that while Christianity, while philanthropy are vainly attempting to solve this problem in regard to the negro, that the extortion, oppression, and abuses of Northern men who have gone down there to lead and marshal the negroes until they govern the white-race South, and help to govern us, are so great that they are making a revolt even among the negroes themselves; and to-day everywhere throughout the South the negro is turning from these "philanthropists," who are his bane, his calamity, and his destruction, and is seeking in his desperation — against all prejudices, against all the natural tendencies of his situation — is seeking relief in forming Seymour and Blair clubs as an escape to the black man from carpet-bag rulers and freedmen's bureaus. It is for you to say whether you will submit to the government of a class that revolts even the ignorant and untutored African, — that revolts the field-hands of the plantation.

Interests of the negro.

It is for you to say at this election whether carpet-baggers shall govern, not merely Florida, not merely Georgia, but whether they shall govern New York, Pennsylvania, Ohio, Indiana, and Illinois.

Negro supremacy — over us also.

A single remark now, and I draw to a close. It is for you to decide in this election, — and if there be a Republican here present, I appeal to him frankly and candidly, — whether you will consent that one man in Florida, massing together the negroes of that State, in number less than one half of the population of one of our Congressional Districts, not more than the County of Columbia in the district that proposes to elect my young friend Charles Wheaton, — I ask you whether you will consent that a number of negroes, not more than the population of the County of Columbia or the County of Duchess, shall elect two Senators of the United States, one for four years and one for six years, as they have just done in Florida, who shall exercise as much power over all questions of commerce, over all questions of currency, over all questions of business, — yea, over another question that deeply concerns you and me; over the question of how much taxes we shall pay, and what shall be done with the money, the little of it that gets into the public treasury after it leaves our pockets, — whether you will consent that these forty thousand negroes in Florida shall exercise as much power through their senators as four millions of white men in the State of New York? A few days ago there came to my house, in the evening, a business man of the city of New York, a Republican and a member of the Loyal League Club, and he brought with him two gentlemen from Florida. One of them was a lawyer, and the other a president of a railway company; and they came to consult me on the business of that company. These two gentlemen are men of high character, and of as much intelligence and as much respectability as any men in this audience. During this interview they told me who the two gentlemen were who now represent the interests of Florida in the Senate of the United States. They both profess to be New Yorkers. One was a Mr. T. W. Osborn, of the city of New York. I thought of getting out a search-warrant to find out who he was. I never heard of anybody who had heard of him. They said he had

lived in the city of New York, where I have resided for thirty years past, and yet I never heard of him, and I could find no one who ever heard of him. This man goes to the Senate. Having all the members of the Legislature, and the Governor, and the Chief Justice; and having voted themselves enormous salaries out of the impoverished people of Florida, and taken full possession, — this omnibus-load of Republicans have sent these two carpet-baggers to represent them in the Senate of the United States, — one for four years, and the other for six years, — to have just as much voice in everything that concerns you as the men who are elected by you from this great State. I have heard of the slave power; but what abuse or what danger or what evil in it was there which equalled this? I trust that when this state of things comes to be understood by the intelligent people of this country, they will be swift to apply the measures of redress.

Republican party cannot reform these evils.

I say, gentlemen, that the Republican party cannot reform these evils. How can they? If there is a Republican here to-day, to him I address this appeal. How can they get out of the rut they are in? How can they divest their minds from the associations under which they have been for the last seven years of wild and prodigal and profligate expenditure? How can they begin a system of economy? [A voice: "They don't want to."] No, they don't want to, my friend; you are perfectly right. And why do they not want to? [A voice: "They are making money out of it."] Yes, they are making money out of it. The habit has grown up. It is political patronage to them; it is benefactions to personal friends; it is profit to many members of Congress. How can they get out of it? They have had three years of peace in which to try to get out of the rut; and have they done it? Is not that enough? Do you want to pay five hundred millions of dollars a year for four years longer in order to settle that question, to see whether they can or will do in the next four years what they have not tried to do for the last three? Five hundred millions for four years is two thousand

millions; and that will nearly pay your national debt. Do you want to try the experiment of Republican rule again? Or will you do as a wise man does when he has dosed himself with quack medicine, and grown sicker and sicker all the while? Will you abandon that medicine and betake yourselves to a good physician? I put it to you to say whether a change for four years is not expedient in the present situation of the country.

I do not mean to abuse the Republican party; I do not mean to abuse any individual of that party. But I ask my Republican friends, now that we have tried their party for three years past with no relief, to strike hands with me and try us for four years, and see what we will do. I will tell you, my fellow-citizens, why I think there is some advantage in trying Seymour in preference to trying Grant. We are not going to have another war; and if we were, the place for General Grant is at the head of the army, and not in the Presidency. If our Republican friends are right as to the imminency of war, we cannot spare General Grant from the army to make him President.

Appeal to Republicans to try a change.

I think they are wrong, and I do not think General Grant is adapted to the duty to which we propose to assign Governor Seymour. How can Grant take a knife and cut up by the roots that have grown into our flesh and that have entwined round our bones this fungus military system which is eating out our substance, which is sucking out the vitality from every industry, which is wasting every man's income, and threatening general ruin? How can he do it? Will his army friends like it? Has he any associations that will lead him to do it? Has he any of the habits or studies of a statesman? Does he even know to whom to apply to help him do it? Is he not now put in by Congress as the head of the reconstruction system and of the military system too? Has he not had full sway over the War Department, and is he not in full accord with Congress? What element of the needed reform is in him, or anything about him?

Grant cannot lead this reform.

Seymour can and will.

On the other hand, take a civilian — a trained and accomplished statesman — accustomed to study these subjects, knowing all about finance, able to command all the best talent and the utmost experience in the country, and let that doctor try and see if he cannot cure the mortal disease that presses on us to the very verge of the destruction of every industry in the country. That is my advice to you. That is my appeal to the Republicans, if such there are here. I believe that, discarding all the illusions and pretences under which the present administration of Congress proposes to continue its own power — I believe and trust that the people will take a sounder and wiser view of what the present exigency requires, and that in the election which approaches they will decide that we shall try a change of measures; and in order that we may get that change of measures, that we shall first have a change of men.

Appeal to all the people for a change.

Fellow-citizens, it is a great pleasure to me to meet you once more. I have come among you because, while most of the illusions of life, in the long interval of years, have passed away, there is one thing that I cherish with ever-increasing devotion and attachment, and that is the belief that my country is destined to be what I fondly thought in my childhood it was and would become. In all that childhood, while living among you, I had listened to the tales of our Revolutionary ancestors — yours and mine. I had heard the story of the motives that induced them to break off from the British Crown, and to take up arms to establish here an empire in which the common people — the people who had no advantages above their fellows — might have safety, protection, peace, and prosperity. When I grew a little older, — a sickly youth and meditative, — I read the teachings of the great fathers of the American Republic, and I believed that there was a great destiny for humanity before my country, — a destiny broader than any class, broader than any interest, — a destiny extending to all men, and particularly to the portion of the community who in

other countries have been the hewers of wood and the drawers of water to the more favored portion. So I was taught, so I believed; and while, in the experiences of many years, illusions that were personal have passed, I cling to that hope, to that faith in my country, as a man clings to the only fresh and unbroken hope that there is in life. I trust that that too is not to be disappointed. At all events, whatever others may do, I shall cling to it to the last. At the cost of much sacrifice of time, business, and comfort, I have once more taken the field to help my Democratic friends to carry out these principles which they and I were devoted to in our youth, and which I have endeavored, and with the blessing of God shall endeavor, to press forward unto success.

Fellow-citizens, it is for us at this election to determine what that destiny shall be. I know that there is great danger and great peril if we fail now. I am not willing to take the risk of the future; and so far as I am concerned, I am surrendering to the cause nearly all my time and all my effort, and I invoke of you, every man, to be a minute-man for the cause of your country. I remember when I was a boy I had an uncle who fought all through the war of our Revolution. He entered the continental army at about sixteen or seventeen; and the old man when his hairs were gray with many winters and the decline of life was upon him, said to us one day: "I felt during all those eight years as if the whole continental cause rested on my shoulders." That is the spirit of the men of the Revolution. That is the spirit which made us a nation and which gave us our independence. That is the spirit which inaugurated this happy system of government. That is the spirit which is needed now, and which, if manifested in this contest, will redeem us, and restore us to all those great hopes which we once entertained. We want peace, for to-day we have no peace. We have the pretence of peace, but we have all the hatreds of war rankling in the bosom of the Congress of the United States. We have an armament that costs us as much as a reasonable war ought to cost. We have all the

blindness to the real interests of the people in their civil affairs and the real duties of rulers which belongs to war. It is time to have peace, to do justice, to be liberal and magnanimous to others, in order that we may have safety and prosperity ourselves. Fellow-citizens, I invoke your attention to this subject, I invoke your co-operation; I call upon you, no matter what your politics may have been hitherto, to try a change, and by your votes to inaugurate Seymour and Blair in the great trusts for which they have been nominated.

We cannot be worse; we will be better!

We cannot be worse, my Republican friend, and even you admit that we may be better. I have not a doubt that not only shall we be better, but that we shall be well. I have confidence that if you elect Governor Seymour and give him adequate support, he will to a large extent redress the evils under which you suffer; and I am free to say that if I did not believe he would exert every power and every faculty of intellect and of body to accomplish these results, I would take no interest in his election. I believe he will have at his service the best minds that the country affords, and best opportunities. I believe that his election is the best chance and the best hope for American constitutional government on this continent. I believe that then once more our country may assume its proud position and be hereafter a star of hope to the toiling millions of other countries, instead of a beacon to warn and deter them from attempting to establish republican government among them.

Appeal to adopted citizens.

And if there be here to-day any man who has escaped from the oppressions of European Governments: if there be to-day any Irishman here, to him I appeal,—will he consent to establish eleven Irelands in this country? If there be a German here, to him I appeal,—will he consent to establish eleven Hungarys, eleven Polands upon this continent?

To all citizens.

Fellow-citizens, the cause involved is the greatest for which men ever strove. I know that our ancestors said that if we fell into a civil war, our own liberties, our own proud and prosperous and happy institutions

would probably be the forfeit. We have got into war, — you could not help it, I could not help it, — and we thought it necessary, by sacrifice of money and of men, to carry our country through. We spent in the North, in that war, two thirds of a million of human lives and four thousand millions of money; and shall we not have back the Union for which we made such sacrifices?

To the soldiers.

If there be a soldier here who fought to restore our American Union on this continent, — self-governing States, people governed by their own consent, — neither to establish military tyrannies on one third of this continent, nor to establish a government in which four millions and a half of white men are held in subjection to three millions of negroes, representing both themselves and the four and a half millions of whites, and representing them with all the disproportionate power that belongs to the senatorial branch of our government; coming in and establishing a rule over the great, prosperous, and powerful free States of the North who fought this battle, — if there be a soldier here, to him I appeal whether it was for this object that he fought. Having now borne the burden and paid the cost, let us see to it that we do not sacrifice the object.

Final appeal to all the people.

Let us go forward to the ballot-box, and with united action and with one voice put into the great trusts of the government men who believe as we do, and who will give their efforts to restore the government to what it was in the days of our fathers. [A voice: "God grant it!"] Yes, as my friend in the audience says, — God grant it! There is no prayer that would ascend to the throne of the Eternal, purer of all selfishness, full of more devoted patriotism, full of more benevolence toward the masses of mankind here and in other countries, and in all future ages, than the prayer which my friend here in the audience puts up, — God grant it! Fellow-citizens, I can imagine that from the ethereal heights the men that made this government — your Washingtons, your Jeffersons, your Madisons — look

down to see whether this generation is to fail in transmitting to their descendants the priceless inheritance of constitutional government. Washington himself — his tall and peerless form leans over from the midst of those patriots and statesmen of the Revolution, to see to-day what we are about to do. Shall we prove ourselves worthy of our ancestry? If so, then there will be hope, not only for this country, but also for the oppressed and down-trodden in every clime and in every age.

XXIV.

By a flagitious amendment of the New York City Charter in 1867 six of the Board of Supervisors had to be chosen from each of the two great political parties. The practical effect of this law responded to the purpose of those who procured its passage, in having a legislative recognition of the principle that an equal division of official emoluments was of more importance than a faithful administration of public trusts. This was a step in the progress of the most formidable combination for the plunder of a community of which, up to the time of its overthrow, our country had any experience. This combination, afterward infamous as the Tweed Ring, became fully organized on the 1st of January, 1869, when A. Oakey Hall was inaugurated as mayor; and its power was enormously increased by the passage of an Act in 1870 practically conferring all the powers of local government upon certain leading members of the Ring for long periods, and freed from all accountability. While this Bill was pending before the Legislature, Mr. Tilden appeared before a committee of the Senate to state his objection to its passage. From the incomplete report of his remarks which has been preserved, the reader can get a pretty definite idea of the enormity of the measure and the degradation of the legislative body which could give to such a Bill the force of law.

is $14,223,000,000. This is the most authentic information we have. But in the volume of the census published in 1866 is a table of valuations, said to be returned by individuals, which make the aggregate about three thousand millions greater. I have never seen that table referred to in any of the various papers published under the auspices of the Treasury for the purpose of strengthening the credit of our public securities, which naturally take the most favorable and flattering views of our national resources. How much of that additional three thousand millions arises from an increased valuation of the slaves does not appear. If the statement contains all the items which are theoretically in assessments for the purposes of taxation, large deductions would be necessary in order to find the real amount of our national wealth. The property in this country owned by foreigners is included. So is all property represented by securities and stocks of this country held abroad, amounting to several hundred millions. So is a vast aggregate of credits which, when you come to compute the property of a community in which both creditor and debtor live, add nothing to the total. Of these there must have been many hundreds of millions of bonds and mortgages, notes and accounts. There were in 1860 about four hundred and fifty millions of railroad bonds; there were two hundred and fifty millions of bank deposits, two hundred of bank-notes, and four hundred and twenty of bank capital; one hundred and fifty and more millions of deposits in savings-banks, and a large amount of State and municipal bonds. There were also stocks in corporations representing values, consisting mainly of real estate, as seven hundred and fifty millions of railroad stock, and many others of a similar character. It is probable that these various deductions, and a proper allowance for the value of the slaves, would not leave this table much larger than the $14,223,000,000 returned by the marshals. At any rate I will imitate the early Knickerbockers, who, according to Washington Irving, resolved that they would adopt for their infant colony the laws of Moses until a better code should be

devised. I will take census returns until a better statement is found.

The national wealth of the United Kingdom of Great Britain and Ireland is stated by Professor Levi to be estimated at £6,000,000,000, or $29,040,000,000.

The estimate prepared by Dr. Elder to aid the Treasury in the negotiation of loans places the production of the country in 1860 at $3,736,000,000, or about 26.3 per cent of the whole valuation of property. It professes to follow the methods adopted by Professor Tucker in his similar estimates for 1850 and 1840; but its author thinks that many large items are omitted. The products of agriculture are made up by adding 90 per cent to the amount in 1850, as computed by Professor Tucker. They are mostly food, which, except as exported, increases in nearly the same ratio with population, or about 35 per cent instead of 90. The cotton and tobacco and other exportable articles would scarcely carry up the average to 50 per cent, leaving four hundred and twenty-five millions of over-estimate. The allowance from productions of manufacture for the cost of the raw material is one third; while the actual returns of the census make it about 55 per cent, showing here, also, an over-estimate of $75,000,000. And some products are repeated in several successive forms. If we take the estimate without reduction, it gives about $118 per head as the yearly product.

Our annual gross income.

Mr. J. R. McCulloch, in the edition of his statistical account of the British Empire published in 1854, estimated the gross income of the people of England and Scotland (referring, I think, to 1840) at £18 10*s*. or $89.54 per head; and that of the people of Ireland at about one third of that amount.

Annual gross income of the British nation.

Professor Levi, in his work on Taxation published in 1860, estimated the whole gross income of the United Kingdom at 600,000,000 of pounds, or 2,904,000,000 of dollars, for 29,000,000 of people in 1858, or about $100 per head. Mr. Baxter, in his very elaborate work on the National Income,

read before the Statistical Society of London in January of the present year, sums up the result thus: —

"The original earnings out of which the nation provides food and clothing, and pays all taxes and expenses, may be taken at from £550,000,000 to £600,000,000 a year. The second-hand or dependent income, which is paid out of original earnings, and gives a deceptive magnitude to the national income roll, is from £200,000,000 to £210,000,000."

And he adds, —

"The income of England is the largest of any nation, and shows wonderful good fortune and prosperity."

We have the advantage of cheap production in agriculture. They have the advantage of cheap production in manufactures and mining; of an accumulated capital twice as large as ours, and an abundance of costly machinery to economize human labor; of a varied and profitable foreign commerce three times as large as ours. We are a debtor nation, paying fifty or sixty millions a year in gold to our foreign creditors; they are a creditor nation, receiving thirty millions of pounds, or one hundred and forty-five millions of dollars, a year from foreign debtors or foreign investments.

Annual national savings.

Mr. Gladstone, in delivering his financial statement as Chancellor of the Exchequer of England in 1861, said: "What are the annual savings of this country? May we take them to be £50,000,000! Enormous as that sum is, I believe it may be taken as the amount which the skill, and the capital, and the industry, and the thrift of England may be computed to lay by every year." That sum is $242,000,000 in gold value, as the annual savings or growth of capital of the United Kingdom of England, Scotland, and Ireland, at that time having a population of 29,321,000; with its vast accumulated wealth, twice as large as all our property in 1850; with an ocean commerce three times as large as ours, and with its immense and costly machinery applied to manufacturing so successfully as to excel all other nations in the

competition. This I assume to be, after all the taxes are paid; after all that part of the taxes which is not saved by the recipients of the money paid out in the public expenditure has been taken from the national income.

In the United States.

No very satisfactory attempt has been made to analyze the complex facts necessary to enable us to determine with certainty, even if we can find the means to do so, the amount of the annual savings of our people, on the basis of our condition in 1860. No doubt it would be among the best methods to take a periodical account of our stock, as a merchant does. Several attempts have been made to do so from data afforded by the census of 1860 as compared with the census of 1850. Comparing the assessments of those years, the personal property increased from about $2,100,000,000 to $5,100,000,000, and the real estate from $3,900,000,000 to $7,000,000,000, or about $3,000,000,000 in personal and $3,000,000,000 in real estate. In both cases the value of the slaves is included in the personal. The sum given of the "true valuation" by the census of 1850 is about $7,000,000,000; but deducting $961,000,000 for the value of the slaves, the amount is reduced to $6,174,000,000. Making a deduction of $1,936,000,000 for the value of the slaves from the $16,160,000,000 given as the "true valuation" in 1860, we have $14,223,000,000. The result is an increase of about $8,048,000,000 in the ten years. But there are many undeniable fallacies in this result. It is probable, both as to assessments and censuses, that they tend each time to become more perfect. It is certain that the "true valuation" in 1860, as compared with that of 1850, is greatly enlarged by making up the same things at higher nominal values. This seems to be true in every case where we have the means of measuring by quantity. Take the case of the slaves. Of the increase in aggregate value of 100 per cent, 35 is an increase of numbers, and 65 in valuation per head. Take the case of farm stock, estimated at $544,000,000 in 1850, and $1,089,000,000 in 1860. The numbers of the horses, cattle, sheep, and hogs are given.

About 35 per cent is an increase in quantity, and about 65 per cent is mere marking up. The important item, the "cash value of the farms," cannot be subjected to so exact a test; but an immense marking up is evident. The valuation swells from 3,371,000,000 to 6,645,000,000, — an increase of the enormous amount of 3,274,000,000, or above 103 per cent, while the acreage increases but 44 per cent; that is more than 7 per cent compounded every year of the ten. It cannot be possible that more than a small fraction of this is actual surplus profits, or income saved after supporting the farmers and their families, and paying all their expenses and taxes, and reinvested in permanent and productive improvements, — profits or income which could have been diverted to other purposes or drawn into the public treasury. There are, doubtless, cases in which an increased productive capacity, resulting from other causes, may be fairly capitalized, but the mass of this increase of valuation cannot be of that character; nor if it were, would it be properly treated as income, but only as a special growth of capital. If an individual were required to pay the whole of it as a tax into the public treasury, he could do so only by selling his farm; if the whole community were required to do so, they would all be sellers, without any buyers.

There is a similar fallacy in respect to personal property. The period between 1850 and 1860 was remarkable for the peculiar increase of corporate stocks and bonds, and all those forms of credit and representations of values which repeat themselves once or more in the usual modes of assessing property; and it cannot be doubted that some thousands of millions of them existed in 1860. The "Merchant's Magazine," some years ago, after considering this subject, came to the final conclusion that our average savings for the period between 1850 and 1860 were above $300,000,000 a year, and could not be more than $400,000,000. If we take the larger amount, we might assume that the latter year of the term, 1860, would perhaps reach about $500,000,000. The "International Almanac" for 1866 entered into an elaborate calculation, which

resulted in fixing $714,000,000 as the sum of our annual savings; but of this about 35 per cent represented a growth of real estate, which is not income, leaving $455,000,000 as the true result of its method of computation. I do not adopt any of these computations, nor have I the leisure to see whether data exist to make one for which I would be willing to be responsible. I merely state the condition in which the discussion now stands, in order to throw some light on the practical question whether we can afford to continue our present career of taxation. Whatever difficulty there may be in fixing the true amount of our annual savings, — taking 1860 as a normal period from which to get a standard, — there is no difficulty in determining against the exaggerations which are frequently attempted to be imposed upon the public.

Waste of our capital during the war.

It would seem incredible that such a gigantic civil war as we have passed through could be carried on for almost four years without a vast consumption of the national capital, independently of the destruction of property by military operations. I do not attempt any computation of what that consumption must have been; but I will take an illustration. Suppose a million of men of the North were at one time in the field. It is not improbable that it would require the labor of another million at home to supply the additional consumption and the waste of the million in the field. If half an equal number were employed in the same way in the South, the aggregate would be the withdrawal at the time referred to of three millions of workers from the ordinary avocations of industry. Now the whole number of persons in the United States, including women and boys, whose occupations are stated by the census of 1860, was about 8,250,000. It is not improbable that at some times during the war a whole third, perhaps even more, of all the workers in the country were diverted from production, and devoted directly and indirectly to the arts of mutual destruction. Now no people ever existed who were able to do this without a rapid and immense consumption of what they had previously accumulated. The

daily wants of the masses of mankind, even in the most productive and prosperous nations, press closely upon their daily earnings. The portions of their current income which it is possible to save and accumulate is insignificant in comparison with the vast proportion of all our workers whom we withdraw from producing supplies for the ordinary needs of humanity. New applications of machinery were a small alleviation; economies in consumption by inferior modes of living were much more important: but the main results were not averted. Immigration helped us of the North greatly; we might almost say — and if we include the accessions from it to our productive and military strength during the decade preceding the war, we must say — carried us through. And yet there are dabblers in political economy, jugglers in statistics, mountebanks in figures, who pretend that we were growing rich all the while! Even some who wrote with a patriotic purpose of aiding the public credit, which would consecrate error if that error were not ridiculous, calculate that our population continued during the war to increase at the highest rate ever known, instead of increasing very slowly; that the accumulation of capital by annual savings continued at the rate of the prosperous decade from 1850 to 1860, — which is itself exaggerated, probably just about doubled from the truth; and piling these three fallacies one upon the other, they constructed an easy way to pay taxes and debts never yet realized in any human experience. And now, when patriotism no longer tempts to illusion or to deception of the public, we are boastingly pointed by Mr. Commissioner Wells to a few special, selected instances of increased production, insignificant in proportion to the whole production of society, and some of them caused by a forced direction of labor into those particular channels, to convince us how rich and prosperous we are becoming. In order to know how we have been getting on, we should look at the great universal wants of humanity; ask how are they supplied; how is our stock of commodities which we provide for such purposes; how are the more permanent provisions we are compelled to

make. Have we kept up our provision for these wants? I will first look to shelter.

Shelter.

In the United States in 1860, for all our white population there was one dwelling to every 5.53 persons. In the prosperous decade from 1850 we had gained that point from one for 5.95 persons in 1850. In New York in 1855 the State census gave as the average value of a dwelling about $1,350; of frame-houses about $800; of log about $460; and in 1865 for all, $1,800; for frame, nearly $1,000; and for log, about $700.

I think that the expenditure for houses to keep up the then existing ratio of accommodation, if that expenditure were made on the prices of 1860, could not be less than from $100,000,000 to $150,000,000 annually. The money cost of the same work now would be at least twice that sum.

The diversion of labor during the war, and the high cost of construction, greatly retarded the supply of new houses, or even the improvement or repair of the old; and since the war the high cost of construction, and uncertainty as to the trustworthiness of paper money values, has deterred men from investing in so permanent a form. The consequences have been a very deficient supply, large increase in the prices of houses and rents, which take a disproportionate share of the earnings of all who do not own their houses. If the deficiency has been one half of the usual supply, or from fifty to seventy-five millions a year, it would amount to from four hundred to six hundred millions of dollars on the prices of 1860, and could not now be replaced on the present scale of money values for twice that sum.

Food.

I now turn to the provision for our food. First, our live-stock. In the Report of the Commissioner of Agriculture, dated Nov. 20, 1866, are the results of an investigation into the number of horses, mules, cattle, sheep, and hogs existing in 1866 in the eleven States which attempted to secede, and also a statement of the number of these animals in the Northern States east of the Rocky Moun-

tains in 1865. The census of 1860 contains a statement for each of the States, and a supplementary table containing perhaps 10 per cent additional returned by the marshals, but not included in the schedules of agriculture. One of my young men has compared these two periods in the South and North separately, adding to the Commissioner's tables for 1865 and 1866 the same proportion which the supplementary table of 1860 bears to the schedule of agriculture, assuming that the recent reports had included only what the schedules of agriculture did in 1860. He did this so as to be sure not to overstate the deficiency. The result is to show a great diminution in the number of animals. At the prices of February, 1867, which are those given in the Report, the loss in the South is about $250,000,000; on the prices used in the census of 1860, it is about two thirds of that, or $167,000,000. The loss in the North is about $77,000,000, after taking out about $40,000,000 for the increase of sheep, or on the prices of 1860 about $51,000,000, making in all $298,000,000 on the prices of 1860. That is the reduction from the quantities actually existing in 1860. If you compute the increase of population at 18 per cent for the six years, or about two thirds of our old rate, there ought to have been a proportional increase of animals. That, at the prices of 1860, would be about $162,000,000. The whole deficiency, then, is $390,000,000. In round numbers, $400,000,000 on the prices of 1860, or on the Commissioner's prices in his last Report, $600,000,000, to restore our live-stock to the standard of 1860.

DIMINUTION OF LIVE STOCK FROM 1860 TO 1866.

Southern States.	Diminution.	Per cent on stock in 1860.	Price in February, 1867.	Value.
Horses	650,796	32.13	$79.46	$51,712,250.16
Mules and asses	334,104	37.08	92.52	30,911,302.08
Neat cattle	4,112,013	33.88	30.00	123,360,390.00
Sheep	1,199,990	21.04	3.37	4,043,966.30
Swine	7,281,886	43.31	5.43	39,540,640.98
Total				$249,568,549.52

DIMINUTION OF LIVE STOCK FROM 1860 TO 1865.

Northern States east of Rocky Mountains.	Diminution.	Per cent on stock in 1860.	Price in February, 1867.	Value.
Horses	670,307	12.97	$79.46	$53,262,594.22
Mules and asses	92,959	23.45	92.52	8,600,566.68
Neat cattle	947,666	6.19	30.00	28,429,980.00
Swine	4,870,107	24.81	5.43	26,444,681.01
Total				$116,737,821.91
Sheep increase	11,815,946	69.46	3.37	39,819,738.02
Total				$76,918,083.89

Annual products of agriculture.

I have caused the value of all the agricultural products of 1866–1867 contained in the Report of the Commissioner, of which the quantities are given, to be calculated on the same prices at both times, taking those prices used in the "International Almanac" of 1866. They are the prices of 1860 at the place of production. Agricultural products in the United States other than orchard and market-garden products, hogs packed, and other animals slaughtered, are all where the quantities are given. The following is the result: —

YEAR ENDING JUNE 1, 1860.

Total money value	$1,311,340,550
Deduct cotton	172,385,664
Total	$1,138,954,886

SAME YEAR, WITH 13 PER CENT ADDED.

Total money value	$1,474,144,324
Deduct cotton	172,785,664
Total	$1,301,758,660

YEAR 1866–1867.

Total money value	$1,262,338,428
Deduct cotton	70,863,232
Total	$1,191,475,196

Articles.	1859–1860.				1866–1867.	
	Quantity.	13 per cent added.	Price.	Value.	Quantity.	Value.
Wheat	173,104,924	195,608,559	$1.00	$195,608,559.00	175,000,000	$175,000,000.00
Corn	838,792,740	947,835,796	.45	426,526,108.20	867,946,295	390,575,832.95
Rye	21,101,380	23,844,559	.45	10,730,051.55	20,864,944	8,389,224.80
Oats	172,643,185	195,086,799	.30	58,526,039.70	268,141,077	80,442,323.10
Buckwheat	17,571,818	19,856,154	1.00	19,856,154.00	22,791,839	22,791,839.00
Barley	15,825,808	17,883,264	.60	10,729,958.40	11,283,807	6,770,284.20
Potatoes, Sweet	42,095,026	47,567,379	.60	28,540,427.40	107,200,976	56,816,517.28
Potatoes, Irish	111,148,867	125,598,219	.50	62,799,109.50		
Rice	187,167,032	211,498,746	.03	6,344,962.38	10,104,000	303,120.00
Cane Sugar	230,982,000	261,009,660	.05	13,050,483.00	40,000,000	2,000,000.00
Maple Sugar	40,120,205	45,335,831	.15	6,800,374.65	40,120,205	6,018,030.75
Molasses, Cane	14,963,996	16,909,315	.30	5,072,794.50	2,500,000	750,000.00
Molasses, Maple	1,597,589	1,805,275	.40	722,110.00	2,000,000	800,000.00
Molasses, Sorghum	6,749,123	7,626,509	.30	2,287,952.70	10,000,000	3,000,000.00
Peas and Beans	15,061,995	17,020,054	.50	8,510,029.00	15,061,995	7,530,997.50
Wine	1,627,242	1,838,783	1.00	1,838,783.00	4,000,000	4,000,000.00
Butter	459,681,372	519,439,950	.12	62,332,794.00	460,000,000	55,200,000.00
Cheese	103,663,927	117,140,238	.11	12,885,426.18	200,000,000	22,000,000.00
Beeswax and Honey	24,689,144	27,898,733	.20	5,579,746.60	24,689,144	4,937,828.80
Hay	19,083,896	21,564,802	12.00	258,777,624.00	21,778,627	261,343,524.00
Hemp	74,493	84,177	100.00	8,417,700.00	74,493	7,449,300.00
Flax	4,720,145	5,333,764	.07	373,363.48	4,720,145	330,410.15
Cotton	2,154,820,800	2,434,947,504	.08	194,795,800.32	885,790,400	70,863,232.00
Tobacco	434,209,461	490,656,691	.09	44,159,102.19	388,128,684	34,931,581.56
Hops	10,991,996	12,420,955	.07	869,466.85	20,000,000	1,400,000.00
Wool	60,264,913	68,099,352	.35	23,834,773.20	100,000,000	35,000,000.00
Clover Seed	956,188	1,080,492	1.50	1,620,738.00	956,188	1,434,282.00
Grass Seed	900,040	1,017,045	1.50	1,525,567.50	900,040	1,350,060.00
Flax Seed	566,867	640,560	1.50	960,840.00	566,867	850,300.50
Silk Cocoons	11,944	13,497	5.00	67,485.00	11,944	59,740.00

Total values, 1859–1860, $1,474,144,324.30; 1866–1867, $1,262,338,428.59.

The stocks which society keeps on hand of agricultural products, gathered once a year, and of manufactures which for the year 1860 amounted to nearly $1,900,000,000, and of imported articles to provide beforehand for our annual wants, constitute a large share of our tangible, visible personal property. These stocks were all very large at the beginning of the war, and at its close were very much exhausted. Then we have to add what of our specie we exported beyond our annual production, and the increase of our foreign debt, and our private securities and stocks sent abroad during and immediately after the war. Other necessaries.

I cannot stop to estimate with proper care the vast aggregate. I presume two billions of dollars in the values of 1860 would not, at the close of the war, have replaced us in as good a situation relatively to each one of our population as we were in at its beginning, — with as full a supply of houses and other buildings, farm improvements and machinery and implements, stocks of live animals, of agricultural products, of commodities and merchandise, and furniture and clothes; with our specie restored, and without increase of our foreign debt.

We constructed during the war, from January, 1861, to January, 1865, about 3,250 miles of railway, at a cost of about eighty millions; but how beggarly the amount appears, compared with our expenditures or our taxes! The test of our condition is the property and provision we have for each person. I do not mean to include in this conjecture of our deficiency the destruction of property in the South by military operations. I do not mean to include the special diminution in the values of real estate and productive capacity of the eleven desolated States, which contained about one third as much property in 1860, after deducting the value of the slaves, as all the other States. I am afraid a true exhibit of what I do include would be much worse. I do not wish to exaggerate or alarm; I simply say that we cannot afford the costly and

ruinous policy of the Radical majority of Congress. We cannot afford that policy toward the South. We cannot afford the magnificent and oppressive centralism into which our government is being converted. We cannot afford the present magnificent scale of taxation.

XXIV.

By a flagitious amendment of the New York City Charter in 1867 six of the Board of Supervisors had to be chosen from each of the two great political parties. The practical effect of this law responded to the purpose of those who procured its passage, in having a legislative recognition of the principle that an equal division of official emoluments was of more importance than a faithful administration of public trusts. This was a step in the progress of the most formidable combination for the plunder of a community of which, up to the time of its overthrow, our country had any experience. This combination, afterward infamous as the Tweed Ring, became fully organized on the 1st of January, 1869, when A. Oakey Hall was inaugurated as mayor; and its power was enormously increased by the passage of an Act in 1870 practically conferring all the powers of local government upon certain leading members of the Ring for long periods, and freed from all accountability. While this Bill was pending before the Legislature, Mr. Tilden appeared before a committee of the Senate to state his objection to its passage. From the incomplete report of his remarks which has been preserved, the reader can get a pretty definite idea of the enormity of the measure and the degradation of the legislative body which could give to such a Bill the force of law.

ENORMITIES OF THE TWEED CHARTER.[1]

THE objection to the commission system is not that the State ought never to have a commission. No man ever objected that, in 1807, a commission was appointed to lay out streets in the city of New York. No man ever objected when there was a specific work of construction, not involving the exercise of the ordinary powers of government, that it might be done in that mode. When the question was argued before the Court of Appeals in respect to the Police Commission, the distinguished and illustrious judge who maintained the extreme views on the side against the judgment of the Court — I refer to Judge Brown — made a number of exceptions to which the principle of the objections he made did not apply. One of these was the Central Park. When Mr. Hoffman was upon the stump in 1866 — I remember it well, for I think I heard the speech, though I am not quite sure of that — he expressly excepted the Central Park from the objections made by the Democratic party. Without referring further to that subject than I now do, I shall state what was the real, strong governing objection to the system of commissions. It was that the ordinary powers of government were seized hold of by the party then dominant in Albany in the State government, and that New York, in its local affairs, was governed by the State, and not by its own people. No doubt there had been evils and abuses that led to that state of things.

It is almost always the case that when usurpations of power or perversions of power arise, that some public evil is pleaded

[1] Extract from a speech of Mr. Tilden before a committee of the Senate, April 4, 1870.

as the ground and excuse. Now, sir, what I want is self-government for the people of the city of New York to the largest practicable extent; and the criticism which, it strikes me, this Bill is in some degree subject to is this, — that by the first appointment of these various officers, self-government in the people of the city of New York is in abeyance for from four to eight years. Sir, by that Bill the appointment of all these officers is to be made by a gentleman now in office. It is precisely as if in the bill it had read: Not that the mayor shall make these appointments, but the individual who to-day fills that office. On the 31st of December, by the provisions of this Bill, the term of office will expire. Then, sir, what will be the situation of his successor? For two years he will have no power whatever over the administration of the government of which he is the nominal head. All these functionaries survive him. Their terms go beyond his term, and he has not the power to remove them, not the power to enforce any practical responsibility as against them. He is a mere cipher. Then, sir, at the end of two years another election takes place, another mayor is elected. Still these officers extend their terms clear beyond his, — the shortest of them being for four years, and the longest of them for eight years, many of them for five. Sir, I say in all kindness and deference, this is not self-government for the next five years; it is a government in which the people will have no voice — none whatever — for that long period. The Act proceeds in the same way in which the Acts creating commissions have done. A gentleman is designated who makes these appointments. To all practical intents and purposes they are commissions just as under the old system. Now, sir, I think this ought to be remedied. I think it can be remedied. Take, for instance, the Department of Public Works. Under the Republican system of commissioners, the Street Department and the Croton Board have been reserved to the control of the city authorities. They stand as under the old system anterior to the time when these commissions began to be formed. The mayor has the power to remove them with the consent of

the Board of Aldermen: under this Bill that power is obliterated. At present the aldermen, by a two-thirds vote, have the power to remove: under this Act that power is obliterated. They cannot be originally appointed without confirmation: under this Bill that power is obliterated. Now, sir, this is not self-government. What do you have? You have an executive denuded of executive power. The mayor has no power over these functionaries, except to impeach them; and all experience has shown that to be a dilatory and insufficient resource, not to be relied on in the ordinary administration of the government. I think that the Bill will be more conformable to sound maxims of government if corrected in this respect. This charter is further defective in that it makes the election of charter officers coincident with that of the State and Federal officers. The municipal election of a million of people is of sufficient importance to be dealt with by itself; and by so doing you avoid mixing municipal interests with State and National interests. What I object to in this Bill is that you have a mayor without any executive power; you have a legislature without legislative power; you have elections without any power in the people to affect the government for the period during which these officers are appointed. It is not a popular government, it is not a responsible government; it is a government beyond the control and independent of the will of the people. That the mayor should have real and substantial power is the theory we have been discussing for the last four or five years. It is the theory upon which we have carried on our controversies against our adversaries, and are now here. After a period of twenty years, for the first time, the party to which I belong possesses all the powers of the government. I have a strong and anxious desire that it should make for the city of New York a government popular in its form. Mr. Chairman, I am not afraid of the stormy sea of popular liberty. I still trust the people. We, no doubt, have fallen upon evil times. We, no doubt, have had many occasions for distrust and alarm; but I still believe that in the activity generated by

the effectual participation of the people in the administration of the government you would have more purity and more safety than under the system to which we have been accustomed. It is in the stagnation of bureaus and commissions that evils and abuses are generated. The storms that disturb the atmosphere clear and purify it. It will be so in politics and municipal administration if we will only trust the people.

XXV.

THE members of the Tweed Ring, before venturing to put their designs upon the city treasury into operation, took the precaution to secure a judiciary that would protect them from the legal penalties of the crimes they meditated. These precautions were taken with such success that it was idle to institute proceedings in any of the New York city courts against any one having a call upon their protection. The exposure of the robberies that had been perpetrated was of little moment if the robbers could not be punished. A change of the judiciary, so far as the judiciary was subservient to the Ring or under the spell of its terrors, was the next step to be taken toward a purification of the city government, and that could only be accomplished through the tedious process of impeachment. The difficulty of successfully impeaching the instruments of an organization which held the balance of power in both the great political parties was very great, for every step was contested by men who knew where they might look for sympathy and assistance which the prosecutors did not know of nor suspect. It was to meet some of the difficulties encountered on the threshold of the impeachment that Mr. Tilden prepared for the Judiciary Committee of the Senate, and at its request, a reply to the question, "What are impeachable offences or causes of removal by impeachment of a judicial officer?"

Suits had already been begun in the name of the people against Tweed, the Commissioner of Public Works; Woodward, deputy clerk of the Board of Supervisors; James H. Ingersoll and Andrew Garvey, who were mechanics, in whose favor large sums had been fraudulently certified as due; and Richard B. Connolly, comptroller: but the venue was laid in Albany, as there was no court having jurisdiction of these cases in the

city of New York that could be trusted with any case in which Tweed and his associates were parties. But the recovery of the money they had stolen, and even the consignment of the thieves to prison, furnished no security against future depredations so long as the Bench was filled by men who participated in the proceeds of the depredations.[1]

[1] Speaking of the impeachment of the Tweed Ring judges, Mr. O'Conor said, "That was all Tilden's work, and no one's else." He repeated this several times very emphatically, adding that upon that point he was a competent witness. "Tilden," he said, "went to the Legislature and forced the impeachment against every imaginable obstacle, open and covert, political and personal." — *The Century*, March, 1885, p. 734.

The speech of Mr. Tilden in the Assembly, which carried the resolution of impeachment almost with unanimity in a body nine tenths of which were accessible to the influence employed by the culprits, was not reported.

WHAT ARE IMPEACHABLE OFFENCES, OR CAUSES OF REMOVAL BY IMPEACHMENT, OF A JUDICIAL OFFICER, UNDER THE CONSTITUTION AND LAWS OF THE STATE OF NEW YORK.[1]

IMPEACHMENT, as it exists in the United States, under the Federal Constitution and the State Constitutions, is a procedure for the removal from office of a public officer if cause therefor is found to exist. Its object is not to punish the individual, but to protect the people. Even a disqualification afterward to hold office, if it be superadded to the removal, is more preventive than penal.

Our ancestors found impeachment existing in England — from which country we copied much of our political and judicial systems — in a broader form, which sometimes includes, with removal and disqualification, the incidents and consequences of a trial for crime in the ordinary courts of justice. They modified it by providing, — first, that the judgment should not extend beyond removal and disqualification; and secondly, that the party convicted should still be liable to trial and punishment in the ordinary courts. They thus completely separated the two elements, assigning jurisdiction of the personal crime under the laws to the ordinary courts, and reserving to the court of impeachment only the jurisdiction to remove

[1] At a meeting of the Judiciary Committee on Wednesday afternoon, April 24, several members expressed a wish that Mr. Tilden would prepare some notes on this subject. The next day he furnished the references to the Constitution and statutes of this State. In the intervals of other pressing engagements he, a few days afterward, made the annexed paper, and submitted it printed to the committee. There was not time to collect and add the numerous authorities which would support the propositions it contains.

and disqualify an officer unfit to exercise the functions of the office.

The grounds of impeachment must be deduced from the nature and objects of the procedure. They may be called, in a certain sense, offences; but if so, the word "offence" must be taken in a sense coinciding with the nature and objects of such a procedure. It must be held — certainly in the State of New York — to include acts which create personal unfitness for office.

The grounds of impeachment.

The description of impeachable offences or causes for impeachment contained in the Constitution and statutes of the United States and of the several States is usually in general terms, which themselves need definition and interpretation. In the Constitution of the United States the words of description are "treason, bribery, or other high crimes and misdemeanors." In Massachusetts they are "misconduct and maladministration in" the "office." In Pennsylvania they are "misdemeanor in office."

I limit the inquiry, for the present, to impeachable offences or causes of impeachment in New York, under the special provisions of its Constitution and laws, in cases of judicial officers. The Constitution of 1777 used these words of description: "for mal and corrupt conduct in their respective offices." The section is as follows: —

> "That the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment." [1]

The Constitution of 1821 added the general words of the Constitution of the United States, so that the description stood: "For mal and corrupt conduct in office and for high crimes and misdemeanors." The clause is as follows: —

"The Assembly shall have the power of impeaching all civil

[1] Constitution of 1777, sec. xxxiii., 1 Rev. Stat. (5th ed.), p. 31.

officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment." [1]

The Constitution of 1846 gave the power of impeachment, without any words of description of the cases to which power of impeachment should apply. It omitted the words of definition contained in the Constitution of 1777, and also the more extended phraseology of the Constitution of 1821. It conferred the power in the broadest and most general terms: —

"The Assembly shall have the power of impeachment by the vote of the majority of all the members elected." [2]

The judiciary article prepared by the Convention of 1867 and adopted in 1869, and now in force, continued the provision of the Constitution of 1846 in the same words.

I turn to the statutes. The Revised Statutes of 1830 have a section expressed in the words of the Constitution of 1822, which was then in force; it is as follows: —

"The Assembly has the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors; but a majority of all the members elected must concur in an impeachment." [3]

If the omission of the words of description made by the Constitution of 1846 and continued by the amendment of 1867 had any effect in enlarging the definition established by the Constitution of 1821, that enlarged rule would prevail over the statutory iteration of the words of the then existing Constitution.

The Revised Statutes of 1830 further provided that every office shall become vacant on the happening of any one of the following events before the expiration of the term of such office: 1. The death of the incumbent. 2. His resignation. 3. His removal from office. 4. His ceasing to be an inhabitant

[1] Constitution of 1822, art. 5, sec. 2, 1 Rev. Stat. (5th ed.), p. 43.
[2] Constitution of 1846, art. 6. sec. 1, 1 Rev. Stat. (5th ed.), p. 61.
[3] 1 Rev. Stat. (5th ed.), p. 456, part 1, chap. 6, title 2, sec. 15.

of the State, or if the office be local, of the district, county, town, or city for which he shall have been chosen or appointed, or within which the duties of his office are required to be discharged. 5. His conviction of an infamous crime or of any offence involving a violation of his oath of office. 6. His refusal or neglect to take the oath of office within the time required by law, or to give or renew any bond within the time prescribed by law. 7. The decision of a competent tribunal declaring void his election or appointment.[1]

The constitutional oath of office referred to in this statute is as follows: —

> "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of —— according to the best of my ability." [2]

The legislative declaration, that any offence involving a violation of the oath of office prescribed by the Constitution, — that the officer will faithfully discharge the duties of the office to the best of his ability, — is ground for removing the officer, has stood for forty years upon the statute book of this State. It is a rule of law defining an offence, wholly independent of the method of enforcing the removal. If the conviction of that offence be in an ordinary court, — which can only be when the offence is of such a nature that an ordinary court can take cognizance of it, — the removal is effected by operation of law. If the judgment of an inferior court may have such an effect, much more may a court of impeachment assume to try and judge the facts, in the exercise of its jurisdiction, supreme, subject to no review, and free from any technical definition of the offences which it may determine to be proper grounds of removal.

There are two other cases in which this statute declares that the office shall become vacant. One is when the officer ceases

[1] 1 Rev. Stat. (5th ed.), p. 413, part 1, chap. 5, title 6, art. 4, sec. 40.
[2] Art. 12, sec. 1.

to be an inhabitant of this State. If a justice of the Supreme Court, residing in the city of New York, should change his residence to Hoboken, his office would become vacant. His residence there might not be incompatible with his presence in New York during all hours of business. The disqualification is a wise rule of public policy. It is a technical offence only, if it be called an offence at all; it is rather a disability. It involves no moral turpitude. The other case is where an officer is convicted of an infamous crime. That crime might be one wholly disconnected with the duties of his office. The conviction being a public event, involving personal discredit, it is deemed to produce a personal disqualification of a moral nature for the discharge of high official duties. The fact of the commission of the crime is the real source of the disqualification, to which fact the conviction adds certainty and notoriety.

Surely a physical disability to discharge the duties of an office is a cause of removal by impeachment. The failure to resign in such a case is a moral delinquency. Surely insanity is a ground of removal. Can it be doubted that a moral disability is cause of removal, or that, to express it in technical language, it is an impeachable offence? But all this yields too much to the notion that the ground of removal must be an offence. Such is not, in accurate language, the case. Unfitness, inability to serve the public, creates not merely a cause, but a necessity for removal.

I will not undertake to frame a complete definition of all the cases to which impeachment applies. The Constitution and statutes of this State have abstained from attempting such a definition. It is enough, for the present occasion, to discuss certain specific cases which constitute impeachable offences in a judicial officer.

1. A violation of law committed in the performance of his official functions by a judge, unless it proceeds from a mere error of judgment, under circumstances which excuse such an error, is an impeachable offence.

Every judge is bound, by his duty and by his oath of office, to administer justice according to the laws of the land, and not according to his individual notions of what is expedient or right, still less according to his personal caprice or his arbitrary will. Litigants are entitled to have their controversies determined according to law, and every person affected by the action of a judge is entitled to have his rights under the law respected. A condition of the law in which its rules are settled and capable of being certainly and easily ascertained is a high attainment of the best civilization toward the most perfect individual freedom and safety and toward the greatest well-being of society at large. This end is defeated if the rules of law be not obeyed, or be not impartially applied by the judge who is appointed to administer them. The conscience and action of a judge are bound, not only by the statutes, but also by the rules of law which become established without being embodied in the statutes. A violation of such a rule of law which is intentional, or which is not a mere error of judgment under circumstances that excuse such an error, is as much an impeachable offence as a violation of a statute. In most of the leading cases in this country in which judges have been impeached for a violation of law, the violation has been, not of a statute, but of a rule of the customary law. Error of judgment as to what is the law, within reasonable limits, will not be imputed to a judge as official misconduct. But the principle that excuses such error is subject to some qualifications. It is easy to imagine cases in which the error might be so gross as to show a degree of ignorance that is inexcusable, or to indicate mental incapacity, or to evince culpable inattention or indifference to duty, or actual bad faith. Chief Justice Shaw, who was one of the counsel for the managers in the case of Prescott, well said: —

"By the Constitution, which is a law of the highest nature, every officer is bound to take an oath faithfully and impartially to perform and discharge all the duties incumbent on him as such officer, according to the best of his abilities and understanding,

agreeably to the rules and regulations of the Constitution and the laws of this commonwealth.

"To perform these duties faithfully and impartially, he must understand them, and he must use due diligence to acquaint himself with them. I should therefore hold that any gross and continued neglect of the ordinary means of information, — as if an officer were to disregard those public statutes which are made from time to time, and the knowledge of which would be necessary to the intelligent and proper discharge of the duties of his office; or if the judge of an inferior court should wilfully neglect to inform himself of those adjudications of superior courts which, as precedents, ought to bind and govern him, or in any way should wilfully neglect the means of qualifying himself for the faithful and intelligent performance of his duties, — such neglect would be misconduct punishable by impeachment." [1]

2. Any intentional or conscious violation or disregard of official duty by a judge is an impeachable offence. It is misconduct in office. It is a breach of the oath of office. The evil intent may be proved by extrinsic evidence, or may be inferred from the nature or circumstances of the act or omission which constitutes the violation of duty.

3. Any conduct in a judicial office which degrades it in the public esteem, which scandalizes the administration of justice, or which justly impairs the respect and the confidence of suitors, of the Bar, and of the people generally, in the impartiality, purity, and trustworthiness of the court, is an impeachable offence.

John Pickering, judge of the District Court of the United States for New Hampshire, was impeached in 1804 and tried by the Senate of the United States. The fourth article of impeachment was as follows: —

"That whereas, for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the eleventh and twelfth days of November, in the year one thousand eight hundred

[1] Trial of Judge Prescott, p. 181.

and two, being then judge of the District Court in and for the district of New Hampshire, did appear upon the bench of the said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of intoxicating liquors, and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States."

He had been Chief Justice of New Hampshire, and affidavits were submitted, ascribing his misconduct to hypochondria and insanity. He was convicted on this article, as well as on the three other articles, by a vote of nineteen to seven, and was removed.

4. Misconduct, wholly outside of the functions of an office, may be of such a nature as to exercise a reflected influence upon those functions, and to disqualify and incapacitate an officer from usefully performing those functions. This is especially and peculiarly true of the judicial office. In such cases the misconduct constitutes an impeachable offence, and is ground for removal. The words "high crimes and misdemeanors" are not limited to official acts.

Mr. George Ticknor Curtis, in his "History of the Constitution of the United States,"[1] has very clearly defined the nature and causes of impeachment.

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office, or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offence against positive law has been committed, as when the individual has, from immorality, or imbecility, or maladministration, become unfit to exercise the office."

[1] Vol. ii. p. 260.

Even in Massachusetts, where the constitutional description of the causes for impeachment is for misconduct and maladministration in their offices, Chief Justice Shaw said: —

"Perhaps, in this view, the commission of any heinous crime, though not immediately connected with the execution of his office, by utterly disqualifying him and rendering him incapable of performing the duties of an office requiring dignity, confidence, ability, and integrity, might reasonably be construed to be misbehavior and misconduct in office. I should certainly yield with great reluctance to the position of one of the learned counsel, that the commission of an infamous offence by a judge — as perjury or forgery, for instance — would not render him liable to impeachment. It would certainly be a great defect in the Constitution if a man could be brought to the bar one day, convicted of an infamous offence and sent to the pillory, and the next could assume the robes of office and sit in judgment and denounce an ignominious punishment upon a fellow-criminal not more infamous than himself."[1]

The doubt which seemed to exist in the mind of that great jurist arose from the words of description of impeachable offences in the Constitution of Massachusetts, which literally relate only to acts done or omitted in office.

The Constitution and laws of the State of New York have left us free from any possibility of so narrow a construction as that which Chief Justice Shaw disputed in its application to the Constitution of Massachusetts. They recognize the principle that a personal crime may create a personal disqualification to exercise the functions of a public office, although the particular offence may be totally disconnected with that office. They do not limit the range of impeachable acts, omissions, or defaults which may work such a disqualification to any term of office or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public officers.

[1] Trial of Judge Prescott, p. 181.

XXVI.

At the meeting of the Democratic State Convention in the fall of 1871 it became the duty of Mr. Tilden, as chairman of the New York Democratic State Committee, to nominate a candidate to preside over the Convention. As a Presidential election was at hand, when the first term of President Grant's administration was to be passed upon by the people, Mr. Tilden took advantage of the occasion to call the special attention of the Convention to some of the evil tendencies of the Republican Administration, especially its centralizing tendencies, — the gravity of which subsequent events have only too fully verified.

THE EVILS OF FEDERAL CENTRALISM.[1]

REVERENTLY I thank God that after the midnight darkness which has brooded over the Republic, the uplifted cloud begins to show its silver lining, and there is revealed the dawn of a new and better day. The Democracy, burnishing its armor and purifying its ranks, advances to fight anew the battle against centralism and corruption to which, seventy-five years ago, it was first led by Thomas Jefferson in the nation and by George Clinton in this State.

Those dangers have recently assumed vastly greater dimensions than at the birth or at any other time during the existence of the Republic. Mankind naturally fear the evils they have last experienced, even after those evils have passed away and others of the opposite character have taken their place. It is a maxim of history that government is always strengthened by unsuccessful insurrection. We have just emerged from a vast civil war, in which we have conquered a rebellion undertaken to break up our Federal government. Disunion is crushed, slavery is dead forever, the suffrage is irreversibly given to the colored race, the original object of the war is accomplished, every natural result is attained; and yet in our recoil from a danger completely passed, we rush blindly toward the opposite peril. The equilibrium of our whole political system is in danger of being overthrown, and a despotic and corrupt centralism established. The whole value of the arrangement by which our world is kept in its place in the solar system is in the

[1] Speech delivered in the Democratic State Convention held at Rochester Oct. 4, 1871.

balance between two opposing forces. It would matter little to us which of these forces should be allowed to prevail. If the centrifugal tendency should dominate, our planet would shoot madly into the realms of endless space, far away from the source of heat and light and life, until every living thing upon its surface would perish. If the centripetal tendency should prevail, the earth would rush with inconceivable velocity toward the sun, until it would be engulfed in the burning mass.

So it is with the adjustment of powers between the State and Federal governments; disunion and centralization are equally fatal to good government. Disunion would generate the centralism of military despotism in the separate States; centralism attempted over areas and populations so vast would break the parts asunder, and fill our continent, as it has filled every other, with rival nations.

Our wise ancestors devised the only system possible to avoid these opposite evils. They formed a Federal government to manage our foreign relations, to maintain peace and unity between the States, and to administer a few exceptional functions of common interest; and they left the great residuary mass of governmental powers to the States. The Democratic party has carried on the Federal government for fifty of the seventy years of the present century.

Its creed is comprised in two ideas, — first, to limit as much as possible all governmental power, enlarging always and everywhere the domain of individual judgment and action; secondly, to throw back the governmental powers necessary to be exercised as much as possible upon the States and the localities, approaching in every case the individuals to be affected. These ideas dominate over the Democratic party, and find in it their best representative. The opposite ideas, — to meddle with everything properly belonging to individuals, and to centralize all governmental powers, — express the tendencies of the Republican party. Under their inspiration the Federal Government is rapidly seizing upon all the powers of human society. It has assumed to regulate the suffrage, and threatens

to take the control of all elections. It perverts the power to raise revenue into a means of dictating what kinds of business men shall employ their labor and capital in, of giving bounties and granting monopolies, of enriching favored classes by impoverishing the people. It has drawn within its power all the banks, it has begun to create insurance corporations, and it yearns to take jurisdiction of all railroad companies. Its career of usurpation, if continued a few years longer, will involve all the business, all the contracts, and all the property of individuals, and will populate Washington with the lobbies of thirty-seven States.

I oppose centralism because it is incompatible with civil liberty. Forty millions of people, guided by a single hand, would sweep over all dissent and all resistance of isolated or unorganized individuals. Look at France. Half a million of office-holders and half a million of soldiers moved from the centre make civil liberty impossible.

I oppose centralism because it creates an irresponsible power, and an irresponsible power is always corrupt. A government ruling all the affairs of individuals and localities from the Atlantic to the Pacific, from the Great Lakes to the Gulf of Mexico, would be the most incompetent for what it would undertake, the most oppressive, the most irresponsible, and the most corrupt government of which history affords any example. It would repeat and exaggerate the crimes of the worst governments in the worst ages. Already the system is maturing its fatal fruits. Demoralization in public trusts prevails to an extent never before known in this country, and scarcely believed to be possible.

The mass of men of all parties are pure in their intentions; but parties differ in the tendencies of their principles and measures and the ideal standards and training of their leaders. The Democratic party from its foundation, three quarters of a century ago, has held and acted upon ideas which tend to purity in government. It has exacted in its leaders a higher standard of official purity than any other party in the country. It has

never elected to the Presidency any man of as low a standard of official life as any one of the three Republican presidents. Every Democratic National Convention would, by common consent, have rejected from its nomination a man who had filled the public offices with his relatives, or who had been enriched by costly presents, while exercising the immense power of the Presidency to promote men's interest or gratify men's ambition. Even in the corrupt times of James I., the greatest intellect which has appeared among men, Bacon, was impeached by our ancestors because, as Lord High Chancellor of England, he had received presents from suitors in causes depending before him. His defence was that he had decided those causes without favor to the parties who had made the presents. Grant has decided the causes of candidates for the great civil trusts of the country in favor of those who made him presents.

Jefferson left among the noble traditions of his precept and example the maxims that he would not appoint relatives to office, whatever their fitness, and that while in official life he would do nothing to increase his fortune. He would keep himself not only pure, but he would hold high the standard of public morality.

I do not wish to speak harshly of the illustrious soldier who fills the Presidential chair. He may not have been conscious of the evil in the fatal example which he has set. But when the two ideas of personal gain and the bestowal of office are allowed to be in one mind at the same time, they will become associated; and it is but a step to the sale of the greatest trusts. Intellect, training, and virtue will soon succumb to wealth. Vulgar millionnaires will grasp the highest seats of honor and power as they would put a new emblazonment on their carriages or a gaudy livery upon their servants.

I turn now to our own State. The era of Democratic ascendency was the twenty-five years under the Constitution of 1821. Van Buren, Marcy, Wright, and Flagg ruled. They were men of absolute personal honor and truth, and in all the counties

they attracted to themselves similar men. They wielded party power not only for pure measures, but also for honest men. If a young man who had served one session in the Legislature came back to lobby, he lost his standing with the party leaders. Corruption in the legislative bodies was almost unknown. Even in 1836, in the wild speculation of that time, three Democratic senators who had kept back a Bill about the Haarlem Railroad, in order to buy some of its stock, were compelled to resign by a Democratic Senate, and Young and Van Schaack resigned their seats because these senators had not been expelled.

Take the twenty-five years which followed as the era of the ascendency of the Republican party and of that party from which it sprang. Your legislative bodies are invariably found — almost immediately they become — purchasable. Twice within that time the great office of senator of the United States — the seat of Clinton, Van Buren, Wright, and Marcy — has been put up at auction and knocked down to the best bidder. It was not in an assembly of German or Irish citizens, — it was not among Democrats, — but it was in the caucuses of Republican members of the Senate and Assembly elected by the Republicans of the rural districts. The municipal corruptions of New York city are the results of irresponsible power acting in the secrecy of bureaus and commissions. They are the outgrowth of twenty years of Republican legislation at Albany, and a partnership of plunder between men of both parties established during that period.

I have said this much as a demand for historical justice. I have no heart for such discussions. I know the mass of our Republican friends are of good intentions. I have no taste for a rivalry which is degraded into a mere comparison of the relative size of the leprous sores that are on the bodies of the respective parties. Let us rather engage in a generous emulation. Let the people judge us by what we do to cleanse our parties, and to purify the official trusts of the country, and to elevate the standard of public morality.

Principles are the test of political character. The Democracy always made fidelity to official trust and justice to the toiling masses who earn their bread by the sweat of their brow a fundamental article in the party creed. It is time now to proclaim and to enforce the decree that whoever plunders the people, though he steal the livery of Heaven to serve the devil in, is no Democrat.

XXVII.

THOUGH at the fall election of 1871 Mr. Tilden was chairman of the State Committee and the official head of the Democratic party, he advocated the election of a mixed ticket, rather more than half of which was composed of Republicans. The propriety of this course was doubted by some of the most independent of his party associates. He announced his intention to justify his course at a public meeting to be held at the Cooper Institute on the 2d of November. Mr. O'Conor called upon him about half an hour before he went to the meeting, and suggested that he might be going rather too far, considering his relations to the Democratic party of the State. Mr. Tilden answered that he had accepted an invitation to speak, and with it, all its responsibilities. He had notified the State Convention, a month before, that he would not acquiesce in giving the Ring control of the representation of the city in the Senate and Assembly of the State, and said that if the Convention did not deem that course regular, he would retire from his official relation to the Democratic party and take his place as a private man with his plundered fellow-citizens. He felt that the pivot of the whole controversy was in the Legislature; and although the struggle shook the Democratic party of the State into fragments, and enabled the Republicans to elect nearly one hundred out of one hundred and twenty-eight members of the Assembly, in which the Democrats had a majority the year before, so commanding did Mr. Tilden deem the duty to take away from the Ring the control of the Legislature that he did not hesitate to risk these consequences. Neither he nor the public were disappointed with the result. The following is an imperfect sketch, from the daily prints, of his speech, which consumed an hour and a half in the delivery.

COMBINATION AGAINST CONSPIRACY.[1]

FELLOW-CITIZENS, — The million of people who compose our great metropolis have been the subject of a conspiracy the most audacious and most wicked ever known in our free and happy land. A cabal of corrupt men have seized upon all the powers of our local government and converted them, not only to the purposes of misgovernment, but also of personal plunder. It is, in my judgment, the foremost duty of every good citizen to join with his fellows in the effort to overthrow this corrupt and degrading tyranny; for that reason I stand before you to-night. If we found our dwellings wrapt in flames, we should not inquire whether it was an American, an Irishman, or a German, — whether it was a Democrat or a Republican, — who lent us a hand to put out the fire. And on this occasion, in this great crisis in the affairs of our city, knowing nothing about the action of your Committee of Seventy except what I have heard, caring nothing who unites with us or with whom I unite for this grand object, I come before you to advocate a union of all honest men against a combination of plunderers.

I have said that it is a conspiracy. The system to which I refer is the growth of fourteen years under the charter that preceded our present one, and under the Supervisors' law. During that period, there being a Republican majority in the Legislature and a Democratic majority in the municipality, this system grew up. It consisted of several elements. The first was that there should be a division between the corrupt

[1] Speech at the Cooper Institute, New York, Nov. 2, 1871.

Republicans and corrupt Democrats of the common plunder. The second was that the Ring then in power, having no foresight to see, yet had the sense of feeling to perceive that their real enemy was in the legislative power of the State at Albany. Therefore at last they were educated to the idea of themselves going to Albany and becoming the legislative power of the State. They were — this combination of corrupt Democrats and corrupt Republicans — in a state of partial ascendency last year. In 1870 the obligation fell upon the legislators in Albany to frame a new city charter; and what sort of a charter did they give you? I say that charter was the first act in this conspiracy which I am here to-night to denounce and to expose. Under the pretence of giving back to the people of the city of New York local self-government, they provided that the mayor then in office should appoint all the heads of departments for a period of at least four years, and in some cases eight years; and when these heads of departments, already privately agreed upon, were once appointed, they should not be amenable to any election during that period, and should be irremovable by the mayor, who was the elective officer, and they could not be impeached except on his motion, and then to be tried by a court of six members, of which every member must be present to form a quorum. And they stripped every legislative power and every executive power from every other functionary of the government, and vested all power in the half a dozen men so installed for a period of from four to eight years in supreme dominion over the people of this city. I heard my friend Mr. Choate say that the men in power had been elected by your suffrages. I am sure that was a slip of the tongue. The men in power have been elected by no man's suffrage; they never could be elected by any man's suffrage. They were put in power by the act of the Senate and Assembly of the State of New York, without consulting us or any of us. And the ground I have uniformly taken on that subject is, that as the State has put these men on us, the State must take them off. That was the answer I returned my

Democratic friends who said: "What! will you carry a mere local controversy into the State Convention? Will you carry it into the politics of the State, and distract and disorganize the Democratic party?" I said, it is too late to consider that question.

For ten years the Democratic party had pledged itself to give back to the people of the city of New York the rights of self-government; and when it came into power it betrayed that pledge and violated that duty. Alone I went to Albany and recorded my protest against this outrage upon the city,— not only an outrage upon the people of New York, but also a betrayal of the principles and doctrines and promises and professions of the Democratic party. But the plan was ingeniously contrived and skilfully executed,— though it owed its success, not to ingenuity or skill, but to the sacrifice of all moral obligations and all restraints of honor and of principle. And how was it accomplished? Why, by taking a million of dollars — stolen from the tax-payers of the city of New York—and going to Albany and buying in the open market a majority of the two Houses of the Legislature. When I spoke against the charter before the Committee of the Senate, Mr. Tweed sitting in the chair, I already knew that not more than one vote of the Democrats and not more than one vote of the Republicans would be cast against it. But I deemed it a duty I owed, as well to the people of New York as to the Democratic party, to record and file my protest against what I then deemed to be a crime against our cause and a betrayal of our principles.

Now, fellow-citizens, what was the second act in this conspiracy? It was the plausible, innocent-looking, deceitful Section 4 of the County Tax Levy, which provided that liabilities against the county should be audited by three persons,— Mr. Tweed, Mr. Hall, and Mr. Connolly,— and that the amount found to be due should be paid. I do not suppose that the Legislature at that session were very particular or very squeamish; but this clause looked innocent, and the clause was enacted. Who contrived the charter? Who contrived Section No. 4 of

the County Tax Levy? Was it Mr. Tweed? Mr. Tweed, as senator, favored them; so also did Mr. Bradley. But who contrived them? Mr. Tweed could not. Who contrived them? I ask Mr. Peter B. Sweeney, I ask Mayor A. Oakey Hall, who contrived them? Who contrived these clauses? Who prepared the legal methods and legal plausibilities for the crimes that have since been enacted? The third act was the audit. These three auditors met but once. They then passed a resolution. That resolution stands on the records of the city in the handwriting of Mayor Hall; it was passed on his motion: and what was its effect? Did it audit anything? Did it perform the function, did it fulfil the trust committed to the auditors? Not a bit of it! It provided that all claims certified by Mr. William M. Tweed and Mr. Joseph B. Young, the president and secretary of the old Board of Supervisors, should be received as a sufficient evidence, and should be paid. Now I ask again, who is responsible for that action of the Board of Audit? Mr. Tweed, I understand, is nominally a lawyer. That is to say, he has been admitted to practise the profession; but I am bound, in justice to that distinguished character, to say that I do not think, if he had had no complicity with this transaction otherwise, that we could hold him accountable. But there was one man there, and that is Mayor Hall, the actor on this occasion, the mover of this resolution, the draughtsman in whose hands it stands to-day upon the public records, whom his associates might plead as their excuse for having believed that they were performing their duty, — who knew that to audit is to hear, to judge, to determine whether the claim is valid, and how much is properly and justly due upon it; he knew that it was a fraudulent violation of duty on the part of every member of that Board to pass those claims in that manner. I say fraudulent on the part of every man who did not act under his misadvices. I think it is possible that Connolly may claim, that Tweed may claim he had no other accountability for the legality of the audit. I say, then, that on that occasion the chief conspirator, the man who is responsible for the action of the Board, and

the man whom the public ought to hold as morally accountable for the crime that followed afterward, is Mr. Mayor A. O. Hall.

The fourth act in the conspiracy was the collection of the money and its division. Now who collected that money? It turned out, when we came to investigate that subject, that all of it, with the exception of about $113,000, collected by miscellaneous persons, and $338,000 by Mr. Tweed's Printing Company, was collected by Ingersoll, by Garvey and Woodward, — six millions nearly of the amount; and it turns out on further analysis that every time Garvey collected a hundred thousand dollars he paid over 66 per cent of it to Woodward, the deputy to the clerk (Young) of the Board of Supervisors; and every time that Woodward received 66 per cent he paid over to Tweed 24 per cent. I have been asked whether it was an exact percentage. It was not. Sometimes it was a fraction above 24 per cent, but it never reached 25. Sometimes it was a fraction below 24, but it never fell to 23. Whether these fractions arose because there was some small commission to be paid for services to somebody before the amount was divided, or because it was deemed desirable that there should not be an exact percentage, I cannot undertake to say. But this did happen, that always between 23 and 24 — average about 24 — was faithfully paid over under the division. Every time that Woodward received a sum of money — and he collected over a million of these warrants — he paid over 24 per cent to Mr. Tweed. With Ingersoll it was a little more complicated. He paid over on a million and a half of warrants his 66 per cent, and of this Woodward paid over 24 per cent to Tweed; but of the two millions Ingersoll paid over 42 per cent, — which is just 24 per cent less than 66, — and on this occasion Woodward did not pay over the 24 to Tweed. Mr. Woodward appeared in this instance to have reserved his share to himself. Mr. Tweed is entitled to $480,090 on the proportion on which he received the other money, and Ingersoll was not entitled to get 34 per cent when Mr. Tweed only

received 24. There were six different settlements of these accounts. [Here the speaker referred to the Broadway Bank transaction, stating that in four months of the year 1870 something like $240,000 were paid over to Mr. Tweed. He then referred to the fact that during the years 1870 and 1869 the stealings of Tweed, Ingersoll, and Woodward were six million, the aggregate of the transaction about twelve million. The whole private business of Mr. Woodward during the time he was depositing checks drawn upon city warrants did not amount to eight thousand dollars. Therefore it results inevitably that whatever is taken from that account was city money; for there was nothing but city or county money, and no private fund of Mr. Woodward there. Having in the course of some lengthened remarks proved how the city money deposited in the Broadway Bank was plundered, the speaker showed that the city charter was enacted for the aggrandizement of the Ring and for the purpose of getting into the hands of a few such political power as never was before possessed by any number of men. The charter was enacted for the purpose of carrying out these frauds.] I say, then, on the ordinary rules and principles of evidence, looking back to the beginning of the transaction from its close, no man can doubt that all these series of acts were parts of one grand conspiracy, not only for power, but also for personal plunder.

Fellow-citizens, let me call your attention for a moment to the after-piece of these transactions. Mayor Hall is a very distinguished dramatist, and he would consider that it would be an offence to the theory of the drama if the after-piece should be left out. What was the after-piece? I take occasion here to say that the public of New York owe a debt of gratitude to the "New York Times" for its manly and independent and vigorous maintenance of the rights of the people against this corrupt and irresponsible cabal. When that journal published its statements in regard to those frauds, Mayor Hall published a card. In that card he said that these accounts were audited by the old Board of Supervisors, and that neither

he nor Mr. Connolly had any responsibility whatever for them. A little later, about the 16th of August, Mr. Hall said that it is true these particular accounts were audited by the Board of Special Audit; but in doing so they performed a ministerial function, and would have been compelled by mandamus to do it if they had not done it willingly. I do not deem it necessary, in the presence of an intelligent audience, — in the presence of lawyers sitting around me on this stand, — to make any observations upon the idea that to audit and to pay the amount found due — *found due* — is a ministerial function. Then Mr. Hall put in his third defence. He said that this money was paid in pursuance of a compromise made up at Albany, and without which we should not have got the ineffable benefits of the new charter and the action of the supervisors under the supervision of the law. That was a very comfortable and very comforting theory; but unfortunately, when I was looking into the accounts of the Broadway Bank, and found that Garvey and Ingersoll and Woodward had taken nearly all the money, a question very embarrassing and very difficult and almost painful arose in my mind, — Who were those parties that compelled Tweed to make this compromise? It was not Garvey; it was not Ingersoll; it was not Woodward. They were not members of the Senate or of the Assembly; they could not stop Tweed's beneficent measures of reform. Who was the party with whom Tweed as senator compromised? Why, looking over the whole field, I could not see any human being with whom Tweed as senator compromised, unless it was with Tweed as supervisor. There was only one party to the arrangement, and that was the same party.

So failed Mr. Hall's third defence. Then followed a set of expedients quite as remarkable as his defences. On the burning of the vouchers he made a raid on Connolly. He wrote him a public letter demanding his resignation in the name of the public and because he had lost public confidence. Then he sent a touching private letter of regret. We know what course he has pursued since. We remember the raid made by

Hall and Sweeney to get rid of Green. What was the result? I went to the Broadway Bank and found that nine hundred thousand dollars of forged warrants were deposited to Woodward's account, except one to Ingersoll; and the proceeds were divided with Tweed. That Mayor Hall has endeavored to mislead the public mind cannot be denied. It is not only the plunder of millions of dollars that the Ring are charged with, but also an attempt to bribe the Press of New York. It has failed; but no thanks to them. They got a law passed whereby the Mayor had the disposition of all advertising. But he has lavished it upon the Press without perceptible effect. Not only that; when the "New York Times" had the manliness and independence to open its columns in behalf of the people, you all remember how the Ring attempted to take from that paper its own building, fairly bought and paid for. This was also a part of the conspiracy of which I have been speaking.

There is another act in that conspiracy, and that is the attempt to conduct the legislative department of the government in the interest of the plunderers. I have some very distinct and definite knowledge on that subject, as for the past three months persistent efforts have been made to induce me to take something else as a compromise, and give up the Senate and Assembly. Early in August I was visited by these men, and told that I could name every delegate in the State Convention if I would consent to this compromise. This offer has been repeatedly made to me, and everything except the Legislature tendered to me; but I always declined, telling them that everything else was of minor importance, that whatever else I could surrender, that I would not surrender; and I told the State Convention distinctly that I felt it to be my duty to oppose any men who would not go for making the government of the city what it should be, at whatever cost or sacrifice; and that if they did not deem that regular, I would retire, and take position in the ranks of my plundered fellow-citizens. I do not stop to inquire what candidates this meeting has indorsed, or what were to be the proceedings of this meeting, but only asked if

it is a gathering of the people to redeem the municipality of this city. I know no duty paramount to that of standing by the people in this emergency.

In conclusion, I have only to say that all who have an interest in reforming our city government should stand together in the election of senators and assemblymen, and send men favorable to the legislation necessary for the honor and prosperity of our city. Such a state of affairs as we have had in the past cannot exist but for a short period. There is not money or property enough to stand such a band of cormorants except for a very short period. These are my terms of compromise. I happen to know that Tweed's plan was to carry the senatorial districts of this city, and then elect eight of the twelve Republican senators in the rural districts, whom he bought up last year. He thus expects to control the Senate; and it was because I had misgivings that his plan might succeed that I deemed it my duty to aid you in this conflict, not feeling sure that the Republicans could accomplish the work unaided; and I felt it to be a duty that I owed the people to take my place there and stand or fall with those who had gathered around me. [Referring to the masses, Mr. Tilden urged the necessity of action in that direction. The mechanic and laborer should be brought to understand the true position of affairs. The great issue in the election was in the Senate and Assembly; and in this connection he would again impress upon the people the importance of prompt action to resist the conspiracy against their rights and privileges.]

For myself,. I would gladly have escaped the burden that has fallen upon me. I intended to pass next year and this winter abroad, to have some repose after twenty years of incessant labor in my profession. It was because I could not reconcile myself to consent that this condition of things should exist without redress that I deemed it my duty before I should finally withdraw from public affairs to make a campaign, to follow where any would dare to lead, to lead where any would dare to follow, in behalf of the ancient and glorious principles of American free government.

And by the blessing of God, according to the strength that is given me, if you will not grow weary and faint, and falter on the way, I will stand by your side until not only civil government shall be reformed in the city of New York, but until the State of New York shall once more have a pure and irreproachable judiciary, and until the example of this great State shall be set up for imitation by all the other States. When that is done, standing in the high noon of life, ready to begin its descent, I will take my place in the column that marches downward toward the setting sun; and I shall at least hope to have the consolation that when at last, in advancing years, I come to be wrapped in the drapery of my couch, it will be done with the pleasant dream that the great country and institutions established by Washington and Jefferson are destined to live forever, the pride of all lovers of liberty the world over.

XXVIII.

"At a period not very remote," said Mr. Charles O'Conor, one of the counsel selected by a committee of his fellow-citizens to prosecute Tweed and his accomplices,[1] "certain trading politicians discovered that the city of New York might be made the Golconda of fraudulent cupidity. Vicious legislation was brought into their service for a price; and by its use they had attained in the year 1871 much power and measureless audacity. All the local patronage came under the control of four officials by laws of their own framing. They were Hall, mayor; Connolly, comptroller; Tweed, commissioner of Public Works; and Sweeney, president of the Department of Public Parks. Tweed, whom common fame recognized under the designation 'Boss,' as chief of this quartette, enjoyed a plurality of benefices. He was president of the Board of Supervisors and a State senator. Unwilling to rely upon the rule which enjoins 'honor among thieves,' the quartette, as they were called, made unanimity among themselves indispensable to the working of their machinery.[2] During the summer of that year a subordinate's betrayal of confidence led to developments which attracted notice and aroused public indignation. On Oct. 17, 1871 a committee of citizens visited the Capitol and appealed to the Governor for official action.

"At this time the quartette had almost complete control over the local officers, and each of them was studiously protected, by the requisite of unanimity before mentioned, from any adverse action by any or all of his three equals. Local officers were in the main selected through an organization controlled by them; the corporation counsel could not institute actions on his own motion; and in this respect one of them

[1] Peculation Triumphant; being the Record of a Four Years' Campaign against Official Malversation in the City of New York, A.D. 1871 to 1875, p. 29.

[2] Laws of 1871, p. 1[illegible] sec. 3.

absolutely controlled him.[1] William M. Tweed, Jr., son of the 'Boss,' was assistant district attorney. To specify in detail their other powers over the *personnel* of those in authority might be thought indecorous; it might approach too closely that line which, in the territory of facts, divides inculpatory truths that may be spoken from those whose mischievous enormity is, in this connection, best described as being unutterable. They had reduced nine daily papers and nine weekly papers to the condition of stipendiaries, by an act designed, though perhaps without entire success, effectually to muzzle the Press, that potent foe of tyranny.[2] They had failed in only one of the efforts which a mad lust of absolute power had stimulated,— they were defeated in an attempt to revive the exploded judicial power of punishing contempts at discretion.

"This was the state of things when, at the date alluded to, Oct. 17, 1871, the 'Bureau of Municipal Correction' confronted the emergency which had called it into being.

"The strictly local character of criminal proceedings, together with the palpable servility of the local judiciary, then as yet not purged by impeachment, forbade a resort to that class of remedies.

"After careful deliberation, civil actions in the name of the State as plaintiffs, designating Albany County as the venue or place of trial, were determined upon; and on Oct. 24, 1871, a civil action in the name of the people as plaintiffs was begun against William M. Tweed, then commissioner of Public Works; Elbert A. Woodward, then deputy clerk of the Board of Supervisors; and James H. Ingersoll and Andrew J. Garvey, the two latter being mechanics in whose favor large sums of money had been certified as due by the Special Board of Audit, which is made famous by this action.

"At a subsequent date a like action was prosecuted against Richard B. Connolly, who, at the time this general line of operations was commenced, held office as comptroller of the city, and head of the Finance Department. . . . In the action against Tweed there was appended to the complaint a statement in figures which 'could not lie,' prepared by the Honorable Samuel J. Tilden. It demonstrated the frauds, and it came in

[1] Law of 1870, p. 371, sections 23, 40; ibid. p. 481, sec. 2.
[2] Laws of 1871, p. 1232, sec. 1.

time to influence the elections; but it could not prevent Tweed's returns accrediting him as a senator. Still, it produced upon Tweed a crushing effect. He never afterward dared to confront accusation, nor did he dare to take his seat in the Senate. That seat remained awaiting his occupation for his whole term. His quondam associates in that body were too charitable, too timid, or too — something else; they dared not pronounce it vacant. 'Achilles absent was Achilles still.'"

"The statement in figures that could not lie" referred to by Mr. O'Conor appeared in the New York morning papers Oct. 26, 1871.

The following extract from Mr. O'Conor's "Peculation Triumphant," in addition to what has been already cited, will assist the reader to a better comprehension of the prodigious import of this array of "figures that could not lie:" —

"In the Laws of 1870 (p. 878, sec. 4)[1] it is enacted that 'all liabilities against the County of New York incurred previous to the passage of this act shall be audited by the mayor, comptroller, and president of the Board of Supervisors, and the amounts which are found to be due shall be provided for by the issue of revenue bonds of the County of New York, payable during the year eighteen hundred and seventy-one; and the Board of Supervisors shall include in the ordinance levying the taxes for the year eighteen hundred and seventy-one an amount sufficient to pay said bonds and the interest thereon. Such claims shall be paid by the comptroller to the party or parties entitled to receive the same upon the certificate of the officers named herein.'

"Hall was mayor, Connolly was comptroller, and Tweed was president of the Board of Supervisors.

"These persons directed that the county auditor collect from the committees of the Board of Supervisors all the bills and liabilities provided for, and 'that the evidence of the same be the authorization of the said board or its appropriate committees on certificate of clerk or president.'

"This so-called county auditor was one James Watson, since deceased, then a clerk in the comptroller's office. He made up numerous claims; and Hall, Connolly, and Tweed, separately, in pretended compliance with the above-recited act, but without any examination, certified them.

"Such certifications amounted to a sum slightly exceeding

[1] This is a part of what is known as the Tweed Charter.

$6,312,000. The comptroller issued and sold to *bona fide* purchasers the prescribed bonds to that amount, and deposited the moneys obtained thereon with the Broadway Bank to the credit of an account there kept by the chamberlain of the city of New York as county treasurer.

"Immediately upon such pretended audit and allowance of each claim, a check or warrant on said bank in favor of the certificated claimant for the payment thereof was signed by the comptroller, the mayor, and one Joseph B. Young, as clerk of the said Board of Supervisors; and such checks or warrants were accordingly paid by the bank for and on behalf of the county treasurer and to the debit of his said account.

"The accounts or claims so audited were all false, fictitious, and fraudulent; they were made up by fraud and collusion between the said James Watson and the defendants Andrew J. Garvey, James H. Ingersoll, and Elbert A. Woodward; and the payments on such warrants respectively by said bank were, pursuant to a corrupt, fraudulent, and unlawful combination and conspiracy to that end by and between all the defendants, agreed to be divided, and were divided accordingly between the defendants Ingersoll, Garvey, Tweed, and others, unknown, their confederates.

"The certificate of allowance on each claim, the check or warrant for its payment, the actual payment thereof by the bank, and distribution of the proceeds among the conspirators were in each instance substantially contemporaneous. All these frauds occurred between May 5 and Sept. 1, 1871. A large portion of them took place after the first Monday of July, 1870.[1] After that date Tweed was not an officer or member of the Supervisors' Board; but as a private individual he continued auditor under the section in question."

[1] Laws of 1870, p. 483, sec. 11.

FIGURES THAT COULD NOT LIE.

MR. TILDEN'S AFFIDAVIT.

CITY AND COUNTY OF NEW YORK, ss.:

SAMUEL J. TILDEN, being duly sworn, deposes and says, That happening casually in the office of the comptroller of the city of New York, he was consulted by Mr. Andrew H. Green, deputy comptroller, and his counsel, as to the notice proposed to be given to the National Broadway Bank in respect to the alleged forgery of the signature of Keyser & Co. as indorsers of certain county warrants; that soon after this deponent was requested by the said Green to make some investigation in the accounts of the said bank; that deponent noticed on the back of the said Keyser warrants pencil memoranda of E. A. W., or E. A. Woodward, which he supposed had been made thereon by the teller who received the deposits, and was led to examine the deposit account of the said Woodward to see if the Keyser warrants could be identified; that the method of examination adopted was to take a transcript of the deposits as entered on the ledger, and then to decompose the entry of each deposit into the items of which such deposit was made up, by reference to the deposit tickets which had been preserved, and to take a transcript of the debits in the ledger, and then to decompose each entry which was formed of more than one item by reference to the blotter kept by the bank; that deponent traced transactions from the account of the said Woodward into the accounts in the said Bank of Ingersoll & Co., and Andrew J. Garvey, and at last into the account of William M. Tweed, and

caused the same process to be applied to each of the said accounts; that the deponent constructed the schedule marked E in the complaint in this action, and wrote every word and figure in the same except the footings of the several columns, verifying each entry by personal inspection of the transcript made up from the books in the Comptroller's office and entries upon the warrants, and with the transcripts from the books of the National Broadway Bank and from the said deposit tickets, or verifying the same by their being called off by George W. Smith and P. W. Rhodes, who assisted the said deponent; that deponent caused the entries purporting to come from the books in the Comptroller's office to be compared with the original books of record in said office, and the entries purporting to come from the books of the National Broadway Bank to be compared with transcripts from the entries on the said books, and in both cases the said transcripts with the originals, and believes that each and every entry in the said schedule is correct; that deponent has personally examined the deposit tickets embraced within the period included in the said schedule left with the deposits of the said Woodward and the said Tweed; that deponent examined the deposit tickets of the said Woodward and the said Tweed, mentioned in the said schedule, in connection with Arthur E. Smith, a book-keeper of the said bank; that this deponent, in examining the tickets of the deposits of the said Woodward, became familiar with the handwriting of the said tickets, and was informed by the said Smith that it was the handwriting of the said Elbert A. Woodward; that deponent noticed, in examining the tickets left with the deposits of the said Tweed, which deposits are contained in the said schedule, that the handwriting of the said tickets accompanying the deposits of the said Tweed is the same handwriting with that of the tickets accompanying the deposits of said Woodward; and this deponent verily believes that the tickets accompanying the deposits of the said Tweed are in the handwriting of the said Elbert A. Woodward; that deponent also prepared the Schedule F annexed to the complaint; that the

summary of the results deduced from the Schedules A and E annexed to the complaint is correct, and truly represents the disposition of the warrants and the collection of their proceeds, so far as it purports to represent the same; that deponent caused the statement of the county liabilities, marked Schedule A in the complaint and No. 1 in the affidavits, to be made, and believes the same to be correct; that deponent has procured a printed copy of certain minutes of the Board of Supervisors, purporting to be issued by Joseph B. Young, clerk of said Board, which contains the message of Mayor Hall to the Supervisors, under date of August 16, 1871, and apparently delivered to them August 23, 1871; that copy is annexed hereto and marked No. 3; that deponent has heard read by Charles O'Conor the complaint in this case prepared by him; that as to many of the statements of fact therein contained they are true as to deponent's own knowledge, and that deponent has investigated in respect to all such statements of fact, and is satisfied that they are true.

SAMUEL J. TILDEN.

Sworn and subscribed before me, this twenty-fourth day of October, 1871.

E. ELMENDORF, Jr.,
Notary Public for City and County of New York.

From Books in Comptroller's Office.					From Entries in Accounts in the National Broadway Bank.						
					Ingersoll & Co.		A. J. Garvey.		E. A. Woodward.		W.M.Tweed.
Date.	No. of Warrant.	Payee of Warrant.	Last Indorser or Depositor of Warrant.	Amount of Warrant	Deposits.	Checks.	Deposits.	Checks.	Deposits.	Checks.	Deposits.
1870.											
May 6	2012	J. A. Smith . . .	Ingersoll & Co. . .	$34,082.25	$34,082.25	$41,858.93	.....	.....	$41,858.93	.....	.....
May 6	2014	Ingersoll & Co. .	Ingersoll & Co. . .	64,954.87	64,954.87	.....	.....	.....	.....	.....	.....
May 6	2013	A. J. Garvey . . .	Andrew J. Garvey .	46,025.67	.....	.....	$46,025.67	$30,376.44	30,376.44	.....	.....
May 6	2015	Keyser & Co. . .	E. A. W. (in pencil)	*32,596.08	.....	.....	.....	.....	32,596.08	.....	.....
May 7	2016	J. A. Smith . . .	Ingersoll & Co. . .	36,083.80	36,083.80	.....	.....	.....	.....	.....	.....
May 7	2017	C. D. Bollar & Co.	Ingersoll & Co. . .	39,260.17	39,260.17	.....	.....	.....	.....	.....	.....
May 7	2018	C. D. Bollar & Co.	Ingersoll & Co. . .	35,114.08	35,114.08	28,330.80	.....	.....	28,330.80	$18,917.48	$18,917.48
May 7	2019	Geo. S. Miller . .	Ingersoll & Co. . .	42,128.47	42,128.47	46,871.67	.....	.....	46,871.67	9,855.47	9,855.47
May 13	2026	Geo. S. Miller . .	Ingersoll & Co. . .	38,902.22	38,902.22	25,842.47	.....	.....	25,842.47	.....	.....
May 13	2027	C. D. Bollar & Co.	Ingersoll & Co. . .	89,379.00	89,379.00	38,623.11	.....	.....	38,623.11	9,328.39	9,328.39
May 14	2028	A. J. Garvey . . .	Andrew J. Garvey .	45,355.92	.....	.....	45,355.92	59,127.95	59,127.95	.....	.....
May 14	2029	A. J. Garvey . . .	Andrew J. Garvey .	44,255.85	.....	.....	44,255.85	.....	.....	.....	.....
May 14	2030	Keyser & Co. . .	E. A. W. (in pencil)	27,887.38	.....	.....	.....	.....	27,887.38	28,434.21	28,434.21
May 21	2035	J. A. Smith . . .	Ingersoll & Co. . .	34,515.73	34,515.73	.....	.....	.....	.....	.....	.....
May 21	2036	C. D. Bollar & Co.	Ingersoll & Co. . .	39,950.18	39,950.18	.....	.....	.....	.....	.....	.....
May 21	2037	C. D. Bollar & Co.	Ingersoll & Co. . .	39,614.59	39,614.59	.....	.....	.....	.....	.....	.....
May 21	2038	Ingersoll & Co. .	Ingersoll & Co. . .	70,117.59	70,117.59	.....	.....	.....	.....	.....	.....
May 21	2039	Ingersoll & Co. .	Ingersoll & Co. . .	64,984.82	64,984.82	104,631.48	.....	.....	104,631.48	.....	.....
May 21	2043	Geo. S. Miller . .	Ingersoll & Co. . .	34,990.66	34,990.66	23,099.67	.....	.....	3,099.67	.....	.....
May 21	2040	A. J. Garvey . . .	Andrew J. Garvey .	45,444.46	.....	.....	45,444.46	.....	.....	.....	.....
May 21	2041	A. J. Garvey . . .	Andrew J. Garvey .	44,094.91	.....	.....	44,094.91	.....	.....	.....	.....
May 21	2042	A. J. Garvey . . .	Andrew J. Garvey .	44,281.16	.....	.....	44,281.16	88,316.19	88,316.19	30,996.66	30,996.66
May 23	2044	Keyser & Co. . .	E. A. W. (in pencil)	*31,067.79	.....	.....	.....	.....	31,067.79	.....	.....
May 23	2045	Keyser & Co. . .	E. A. W. (in pencil)	*29,393.70	.....	.....	.....	.....	28,690.70	.....	.....
May 23	2046	Keyser & Co. . .	E. A. W. (in pencil)	*16,924.62	.....	.....	.....	.....	16,924.62	.....	.....
May 23	2047	A. Hall, Jr. . . .	E. A. W. (in pencil)	39,445.24	.....	.....	.....	.....	39,445.24	.....	.....
May 23	2048	A. Hall, Jr. . . .	E. A. W. (in pencil)	31,448.82	.....	.....	.....	.....	31,448 82	35,031.87	35,031.87
May 27	2305	C. D. Bollar & Co.	Ingersoll & Co. . .	125,830.56	125,830.56	54,140.60	.....	.....	54,140.60	.....	.....
May 27	2304	A. J. Garvey . . .	Andrew J. Garvey .	40,870.45	.....	.....	40,870.45	26,976.50	26,976.50	9,924.50	9,924.50
May 28	2391	Geo. S. Miller . .	Ingersoll & Co. . .	39,361.21	39,361 21	.....	.....	.....	.....	.....	.....
May 28	2393	Ingersoll & Co. .	Ingersoll & Co. . .	40,314.09	40,314.09	.....	.....	.....	.....	.....	.....
May 28	2394	Ingersoll & Co. .	Ingersoll & Co. . .	39,844.19	39,844.19	64,169.47	.....	.....	64,169.47	.....	.....
May 28	2395	J. A. Smith . . .	Ingersoll & Co. . .	73,002.46	73,002.46	26,260.62	.....	.....	26,260.62	.....	.....
May 28	2390	A. J. Garvey . . .	Andrew J. Garvey .	43,390.81	.....	.....	43,390 81	28,639.64	28,639.94	.....	.....
May 28	2392	A. Hall, Jr. . . .	E. A. W. (in pencil)	21,014.85	.....	.....	.....	.....	21,014.85	25,018.07	25,018.07

May 30	2442	Ingersoll & Co. .	Ingersoll & Co. . .	68,218.82	68,218.82	28,461.09	.....	.....	28,461.09	.....	.....
May 30	2443	A. J. Garvey . . .	Andrew J Garvey .	40,895.34	.....	.....	40,895.34	27,000.34	27,000.34	.....	.....
May 30	2444	J. McB. Davidson	E. A. W. (in pencil)	68,515.70	.....	.....	.....	.....	68,515.70	26,568.75	26,568.75
June 3	2482	Ingersoll & Co. .	Ingersoll & Co. . .	54,130.26	54,030.26	.....	.....	.....	.....	.....	.....
June 3	2487	J. A. Smith . . .	Ingersoll & Co. . .	63,175.51	63,175.51	48,714.51	.....	.....	48,714.51	.....	.....
June 3	2488	Geo. S. Miller . .	Ingersoll & Co. . .	37,326.02	37,326.02	24,859.59	.....	.....	24,859.59	.....	.....
June 3	2483	A. J. Garvey . . .	Andrew J. Garvey .	42,942.16	.....	.....	42,942.16	.....	.....	.....	.....
June 3	2484	A. J. Garvey . . .	Andrew J. Garvey .	41,399.63	.....	.....	41,399.63	.....	.....	.....	.....
June 3	2485	A. J. Garvey . . .	Andrew J. Garvey .	41,180.43	.....	.....	41,180.43	83,031.16	83,031.16	.....	.....
June 3	2481	J. McB. Davidson	E. A. W. (in pencil)	33,553.51	.....	.....	.....	.....	33,553.51	.....	.....
June 3	2486	Keyser & Co. . .	E. A. W. (in pencil)	*19,870.14	.....	.....	.....	.....	19,870.14	51,290.28	51,290.28
June 6	2504	J. A. Smith . . .	Ingersoll & Co. . .	42,291.45	42,291.45	.....	.....	.....	.....	.....	.....
June 6	2505	J. A. Smith . . .	Ingersoll & Co. . .	44,259.23	44,259.23	.....	.....	.....	.....	.....	.....
June 6	2506	J. A. Smith . . .	Ingersoll & Co. . .	36,987.25	36,987.25	.....	.....	.....	.....	.....	.....
June 6	2511	Geo. S. Miller . .	Ingersoll & Co. . .	32,381.73	32,381.73	53,595.72	.....	.....	53,595.72	.....	.....
June 6	2512	Geo S. Miller . .	Ingersoll & Co. . .	35,663.82	35,663.82	45,088.86	.....	.....	45,088.86	.....	.....
June 6	2507	A. J. Garvey . . .	Andrew J. Garvey .	41,563.42	.....	.....	41,563.42	.....	.....	.....	.....
June 6	2508	A. J. Garvey . . .	Andrew J. Garvey .	40,971.15	.....	.....	40,971.15	.....	.....	.....	.....
June 6	2509	A. J. Garvey . . .	Andrew J. Garvey .	40,652.43	.....	.....	40,652.43	.....	.....	.....	.....
June 6	2510	A. J. Garvey . . .	Andrew J. Garvey .	43,774.26	.....	.....	43,774.26	110,635.13	110,635.13	.....	.....
June 6	2513	A. W. Lockwood .	E. A. W. (in pencil)	6,001.65	.....	.....	.....	.....	6,001.65	.....	.....
June 6	2514	A. W. Lockwood .	E. A. W. (in pencil)	4,416.06	.....	.....	.....	.....	4,416.06	.....	.....
June 6	2515	A. W. Lockwood .	E. A. W. (in pencil)	6,629.56	.....	.....	.....	.....	6,629.56	.....	.....
June 6	2516	Keyser & Co. . .	E. A. W. (in pencil)	*11,300.31	.....	.....	.....	.....	11,300.31	.....	.....
June 6	2517	Keyser & Co. . .	E. A. W. (in pencil)	*11,794.16	.....	.....	.....	.....	11,794.16	.....	.....
June 6	2518	Keyser & Co. . .	E. A. W. (in pencil)	*13,326.21	.....	.....	.....	.....	13,326.21	.....	.....
June 6	2519	Keyser & Co. . .	E. A. W. (in pencil)	*728.85	.....	.....	.....	.....	728.85	64,411.68	64,411.68
June 10	2680	C. D. Bollar & Co.	Ingersoll & Co. . .	67,487.21	67,487.21	.....	.....	.....	.....	.....	.....
June 10	2681	Ingersoll & Co. .	Ingersoll & Co. . .	69,719.10	69,719.10	55,929.49	.....	.....	55,929.49	.....	.....
June 10	2682	Geo. S. Miller . .	Ingersoll & Co. . .	44,474.30	44,474.30	29,340.75	.....	.....	29,340.75	.....	.....
June 10	2677	A. J. Garvey . . .	Andrew J. Garvey .	41,309.50	.....	.....	41,309.50	.....	.....	.....	.....
June 10	2678	A. J. Garvey . . .	Andrew J. Garvey .	25,609.30	.....	.....	25,609.30	.....	.....	.....	.....
June 10	2679	A. J. Garvey . . .	Andrew J. Garvey .	41,160.35	.....	.....	41,160.35	71,552.02	71,552.02	.....	.....
June 10	2683	J. W. Smith . . .	J. W. Smith	18,193.32	.....	.....	.....	.....	18,193.32	.....	.....
June 10	2684	Keyser & Co. . .	K. & Co.	*36,830.80	.....	.....	.....	.....	36,830.80	.....	.....
June 10	2685	J. McB. Davidson	J. McB. Davidson .	66,495.89	.....	.....	.....	.....	66,495.89	66,513.28	66,513.28
June 13	2689	Ingersoll & Co. .	Ingersoll & Co. . .	98,259.07	98,259.07	.....	.....	.....	.....	.....	.....
June 13	2690	A. J. Garvey . . .	Ingersoll & Co. . .	47,724.61	47,724.61	39,907.92	.....	.....	39,907.92	16,200.00	16,200.00
June 13	2691	A. J. Garvey . . .	Ingersoll & Co. . .	45,102 77	45,102.77	61,585.73	.....	.....	61,585.73	22,315 45	22,315.45
June 17	2783	Geo. S. Miller . .	Ingersoll & Co. . .	48,768.21	48,768.21	32,136.22	.....	.....	32,136.22	.....	.....
June 17	2782	A. J. Garvey . . .	Andrew J. Garvey .	43,026.04	.....	.....	43,026.04	.....	.....	.....	.....
June 17	2784	A. J. Garvey . . .	Andrew J. Garvey .	45,097.67	.....	.....	45,097.67	58,500.00	58,500.00	.....	.....
June 17	2785	J. McB. Davidson	E. A. W. (in pencil)	49,170.42	.....	.....	.....	.....	49,170.42	61,482.60	61,482.60
June 20	2790	Geo. S. Miller . .	Ingersoll & Co. . .	40,965 41	40.965.41	27,520.68	.....	.....	27,520.68	.....	.....
June 20	2791	Ingersoll & Co. .	Ingersoll & Co. . .	66,292.33	66,292.33	26,973.63	.....	.....	26,973.63	.....	.....
June 20	2788	A. J. Garvey . . .	Andrew J. Garvey .	43,900.53	.....	.....	43,900.53	.....	.....	.....	.....

From Books in Comptroller's Office.					From Entries in Accounts in the National Broadway Bank.						
					Ingersoll & Co.		A. J. Garvey.		E. A. Woodward.		W. M. Tweed.
Date.	No. of Warrant.	Payee of Warrant.	Last Indorser or Depositor of Warrant.	Amount of Warrant.	Deposits.	Checks.	Deposits.	Checks.	Deposits.	Checks.	Deposits.
1870.											
June 20	2789	A. J. Garvey . . .	Andrew J. Garvey .	$44,001 08	.....	.....	$44,001.08	$58,777.38	$58,777.38	.....	.....
June 20	2792	C. H. Jacobus . .	Charles H. Jacobus	5,109.96	.....	.....	.....	.....	5,109.96		
June 20	2793	Keyser & Co. . .	Keyser & Co.	*50,953.85	.....	.....	.....	.....	50,953 85	$44,168.52	$44,168.52
June 24	2804	A. G. Miller . . .	Ingersoll & Co. . .	49,082.30	$49,082.30	.....	.....	.....	.....	.....	.....
June 24	2805	J. A. Smith . . .	Ingersoll & Co. . .	36,441.42	36,441.42	$47,733.67	.....	.....	47,733.67	.....	.....
June 24	2806	A. J. Garvey . . .	Andrew J. Garvey .	43,383.76	.....	.....	43,383.76	.....	.....	.....	.....
June 24	2807	A. J. Garvey . . .	Andrew J. Garvey .	45,756.37	.....	.....	45,756.37	59,058.88	59,058.88	.....	.....
June 24	2802	A. Hall, Jr. . . .	E. A. W. (in pencil)	7,023.96	.....	.....	.....	.....	7,023.96	.....	.....
June 24	2803	A. Hall, Jr. . . .	E. A. W. (in pencil)	6,534.85	.....	.....	.....	.....	6,534.85	.....	.....
June 24	2808	J. McB. Davidson	E. A. W. (in pencil)	12,317.77	.....	.....	.....	.....	12,317.77	.....	.....
June 24	2809	J. McB Davidson	E. A. W. (in pencil)	12,432.16	.....	.....	.....	.....	12,432.16	42,356.67	42,556.67
June 27	2820	Ingersoll & Co. .	Ingersoll & Co. . .	58,330.93	58,330.93	.....	.....	.....	.....	.....	.....
June 27	2821	A. G. Miller . . .	Ingersoll & Co. . .	85,163.22	85,163.22	.....	.....	.....	.....	.....	.....
June 27	2822	Geo. S. Miller . .	Ingersoll & Co. . .	44,874.59	44,814.59	133,998.14	.....	.....	133,998.14	.....	.....
June 27	2823	Keyser & Co. . .	E. A. W. (in pencil)	44,388.67	.....	.....	.....	.....	44,388.67	.....	.....
June 27	2824	J. McB. Davidson	E. A. W. (in pencil)	63,675.37	.....	.....	.....	.....	63,675.37	66,787.54	66,687.54
June 30	2996	Geo. S. Miller . .	Ingersoll & Co. . .	40,549.24	40,549.24	.....	.....	.....	.....	.....	.....
June 30	2998	Ingersoll & Co. .	Ingersoll & Co. . .	54,053.33	54,053.33	.....	.....	.....	.....	.....	.....
June 30	2999	Geo. S Miller . .	Ingersoll & Co. . .	35,748.29	35,748.29	.....	.....	.....	.....	.....	.....
June 30	3000	C. D. Bollar . . .	Ingersoll & Co. . .	49,208.14	49,208.14	94,224.33	.....	.....	94,224.33	.....	.....
June 30	2997	A. J. Garvey . . .	Andrew J. Garvey .	44,995.99	.....	.....	44,995.99	29,879.38	29,879.38	.....	.....
June 30	3001	C. H. Jacobus . .	E. A. W. (in pencil)	3,012.87	.....	.....	.....	.....	3,012.87	29,489.75	29,489.75
July 1	3279	A. J. Garvey . . .	Ingersoll & Co. . .	44,002.38	44,002.38	.....	.....	.....	.....	.....	.....
July 1	3280	A. G. Miller . . .	Ingersoll & Co. . .	55,932.01	55,932.01	.....	.....	.....	.....	.....	.....
July 1	3281	C. D. Bollar & Co.	Ingersoll & Co. . .	37,072.16	37,072.16	42,659.02	.....	.....	42,659.02	.....	.....
July 1	3282	J. A. Smith . . .	Ingersoll & Co. . .	37,426.87	37,426.87	36,680.68	.....	.....	36,680.68	.....	.....
July 1	3283	Ingersoll & Co. .	Ingersoll & Co. . .	29,129.99	29,129.99	29,227.73	.....	.....	29,227.73	24,304 24	24,304.24
July 8	3284	Geo. S. Miller . .	Ingersoll & Co. . .	29,317.59	29,317.59	.....	.....	.....	.....	.....	.....
July 8	3285	Geo. S. Miller . .	Ingersoll & Co. . .	46,947.32	46,947.32	50,234.48	.....	.....	50,234.48	.....	.....
July 8	3286	A. Hall, Jr. . . .	E. A. W. (in pencil)	32,549.67	.....	.....	.....	.....	32,549.67	.....	.....
July 8	3287	A. Hall, Jr. . . .	E. A. W. (in pencil)	8,802.51	.....	.....	.....	.....	8,802.51	.....	.....
July 8	3288	Keyser & Co. . .	E. A. W. (in pencil)	69,231.59	.....	.....	.....	.....	69,231.59	44,507.25	44,507.25
July 19	3349	{J. O. Seymour / Kennard & Hay}	E. A. W. (in pencil)	6,135.57	.....	.....	.....	.....	6,135.57	.....	.....
July 19	3350	Kennard & Hay .	E. A. W. (in pencil)	8,313.85	.....	.....	.....	.....	8,313.85	.....	.....

July 19	3351	Kennard & Hay.	E. A. W. (in pencil)	6,393.33	.....	.....	.....	.....	6,393.33	.....	.....
July 19	3352	Kennard & Hay.	E. A. W. (in pencil)	10,437.55	.....	.....	.....	.....	10,437.55	.....	.....
July 19	3353	Kennard & Hay.	E. A. W. (in pencil)	7,377.42	.....	.....	.....	.....	7,377.42	.....	.....
July 19	3354	Kennard & Hay.	E. A. W. (in pencil)	20,789.10	.....	.....	.....	.....	20,789.10	.....	.....
July 19	3355	Kennard & Hay.	E. A. W. (in pencil)	19,287.45	.....	.....	.....	.....	19,287.45	.....	.....
July 19	3356	Kennard & Hay.	E. A. W. (in pencil)	19,618.27	.....	.....	.....	.....	19,618.27	23,190.69	23,190.69
July 26	3504	J. A. Smith . . .	Ingersoll & Co. . .	72,819.81	72,819.81	.....	.....	.....	.....	.....	.....
July 26	3505	Geo. S. Miller . .	Ingersoll & Co. . .	49,251.31	49,251.31	.....	.....	.....	.....	.....	.....
July 26	3506	A. J. Garvey . . .	Ingersoll & Co. . .	48,869.53	48,869.53	.....	.....	.....	.....	.....	.....
July 26	3507	A. J. Garvey . . .	Ingersoll & Co. . .	49,491.75	49,491.75	127,170.93	.....	.....	127,170.93	35,849.35	35,849.35
Aug. 1	3780	A. G. Miller . . .	Ingersoll & Co. . .	69,537.68	69,537.68	.....	.....	.....	.....	.....	.....
Aug. 1	3781	C. D. Bollar & Co.	Ingersoll & Co. . .	60,503.43	60,503.43	.....	.....	.....	.....	.....	.....
Aug. 1	3782	Ingersoll & Co. .	Ingersoll & Co. . .	91,325.50	91,215.50	108,840.46	.....	.....	108,849.46	.....	.....
Aug. 1	3783	Keyser & Co. . .	E. A. W. (in pencil)	*42,224.98	.....	.....	.....	.....	42,224.98	26,589.98	26,589.98
Aug. 5	3789	A. J. Garvey . . .	Andrew J. Garvey .	72,075.08	47,744.68	21,963.81	72,075.08	47,744.68	21,963.81	17,378.85	17,378.85
Aug. 9	3791	A. G. Miller . . .	Ingersoll & Co. . .	77,744.68	77,949.58	.....	.....	.....	.....	.....	.....
Aug. 9	3792	Geo S. Miller . .	Ingersoll & Co. . .	40,607.49	40,607.49	.....	.....	.....	.....	.....	.....
Aug. 9	3793	A. J. Garvey . . .	Ingersoll & Co. . .	66,118.31	66,118.31	121,471.67	.....	.....	121,471.67	45,145.51	45,145.51
Aug 12	3801	A. J. Garvey . . .	Ingersoll & Co. . .	67,068.83	67,068.89	.....	.....	.....	.....	.....	.....
Aug. 12	3802	Geo. S. Miller . .	Ingersoll & Co. . .	48,639.49	48,639.49	.....	.....	.....	.....	.....	.....
Aug. 12	3803	Geo. S. Miller . .	Ingersoll & Co. . .	46,343.45	46,343.45	.....	.....	.....	.....	.....	.....
Aug. 12	3804	Keyser & Co. . .	Ingersoll & Co. . .	53,620.46	53,620.46	.....	.....	.....	.....	.....	.....
Sept. 1	.....	.....	.....	.....	.....	65,731.21	.....	.....	65,731.21	51,987.76	51,987.76
				.....	.....	1,120.90	.....	.....	1,120.90	.....	.....
				.....	.....	8,458.45	.....	.....	8,458.45	4,613.70	4,613.70
			Grand total	$5,710,913.98	$3,549,329.18	$1,817,467.49	$1,177,413.72	$779,615.69	$3,581,254.26	$932,858.50	$932,858.50

* Keyser's indorsement upon these warrants, alleged by him to be forged.

NOTE. — All the warrants, Keyser's indorsement to which are alleged by him to be forged, within the period of this account, with the exception of the last one, are deposited by Woodward, and the results included in the division with Tweed.

The County Warrants.

Accompanying the foregoing table is a tabular statement of the county liabilities, audited by the Special Board of Audit under section 4 of the tax levy for 1870. This statement is made from transcripts from books in the Finance Department. It embraces one hundred and ninety items, each item representing a warrant; and gives the names of the payees of the warrants, the dates when the warrants were audited, the amounts for which they were drawn, the services, work, and material for which the amounts were paid, and the indorsements and memoranda on the warrants.

There are thirty-four warrants in favor of Andrew J. Garvey, footing up a total of $1,545,791.86. The amounts were paid for plastering, mason work, painting, decorating, materials, labor, and various "and so forths" furnished in building the new court-house, the armories, and drill-rooms. Two of the warrants — one for $47,724.61 and one for $45,102.77 — bear the indorsement "Andrew J. Garvey, for deposit to account of Ingersoll & Co." Another, for $44,002.38, is indorsed "Andrew J. Garvey, Ingersoll & Co." Another, for $66,118.31, is indorsed "A. J. Garvey, per John Garvey, attorney; Ingersoll & Co."

The Ingersoll & Co. warrants number fourteen, making a total of $869,575.89 for furniture, cabinet work, etc.

George S. Miller's warrants, nineteen in number, foot up $777,120.81. They are all indorsed "G. S. Miller; Ingersoll & Co.," and are for repairs, fitting up, etc.

Ten warrants are drawn to C. D. Bollar & Co., the total being $583,419.52. They are for carpenter work, cabinet work, fitting-up, etc. All of them are indorsed "C. D. Bollar & Co.; Ingersoll & Co."

There are eleven warrants to J. A. Smith, making a total of $511,685.78. They are for carpets, shades, etc., and bear the indorsement "J. A. Smith; Ingersoll & Co."

Keyser & Co.'s warrants in this statement number sixteen, the total amount being $490,839.54. A number of them are indorsed "Keyser & Co.; E. A. Woodward" (in pencil).

Seven warrants to James McBride Davidson amount to

$306,160.82. They are for safes furnished the County Court-house, etc. With but one exception they are indorsed "F. McB. Davidson; E. A. W." (in pencil).

The New York Printing Company have six warrants, amounting to $290,036.27, for printing. They are all indorsed "Charles E. Wilbour, president."

The Transcript Association have three warrants, footing up $35,037.56; also indorsed "Charles E. Wilbour, president." These are for advertising.

The Manufacturing Stationers' Company have two warrants, amounting to $59,321.36, for stationery.

Six warrants to Archibald Hall, Jr., make a total of $125,804.05. They are for painting, and are indorsed "Arch. Hall, Jr., E. A. W." (in pencil).

The other warrants are for various sums, and are drawn to various parties. Eight of them, to J. O. Seymour, Kennard & Hay, for stationery, amount to $98,352.54.

The 190 warrants make a grand total of $6,312,541.37.

SUMMARY.

Whole amount of warrants			$6,312,541.37
Deposits by Ingersoll	$3,549,329.18		
Less transfer from Garvey, August 5	47,744.68		
		$3,501,584.50	of w'ts.
Deposits by A. J. Garvey		1,177,413.72	of w'ts.
Deposits by Woodward	$3,581,254.26		
Less transfer from Ingersoll to Woodward	$1,817,467.49		
Less transfers from Garvey to Woodward	731,871.01		
	2,549,338.50		
		1,031,915.76	of w'ts.
		$5,710,913.98	
Warrants deposited by N. Y. Printing Co., as above		384,395.19	
		$6,095,309.17	
Warrants deposited by Ingersoll in Bowery Bank, as shown by his indorsement on the warrants and the No. of that bank in Clearing-house, which (70) is stamped on the warrants No. 2,781, June 17	$6,7151.83		
No. 2,819, June 17	38,496.85		
		103,648.68	
Carried forward		$6,198,957.85	

Brought forward	$6,198,957.85	
Miscellaneous small warrants	113,583.52	
		$6,312,541.37
Ingersoll deposited warrants		3,501,584.50
Ingersoll deposited check of Garvey		47,744.68
Total		$3,548,329.18
Ingersoll's checks paid over to Woodward		1,817,467.49
Ingersoll's checks to parties not traced		$1,731,861.69
Garvey deposited warrants		1,177,413.72
Garvey's checks paid over to Ingersoll	$47,744.68	
Garvey's checks paid over to Woodward	731,871.01	779,615.69
Garvey's checks to parties not traced		$397,798.03
Woodward deposited warrants		1,032,715.76
Woodward deposited checks from Ingersoll		1,817,467.49
Woodward deposited checks from Garvey		731,871.01
Total		$3,582,054.26
Woodward paid over to William M. Tweed in checks, deposited in Woodward's handwriting		932,858.50
Woodward's checks to parties not traced		$2,649,195.76
William M. Tweed received from Woodward, as traced		932,858.50
William M. Tweed received from Printing Company, as traced		104,333.64
Total		$1,037,192.14

DEPOSITS TO CREDIT OF NEW YORK PRINTING COMPANY.

Date of Transaction.	No. of War'nt.	Payee of Warrant.	Last Indorser of Warrant.	Amount of Warrant.
1870.				
June 7.	2521	New York Printing Co.	C. E. Wilbour, President.	$12,272.03
	2522	New York Printing Co.	C. E. Wilbour, President.	39,318.64
	2523	New York Printing Co.	C. E. Wilbour, President.	21,244.09
	2524	New York Printing Co.	C. E. Wilbour, President.	103,500.03
	2525	New York Printing Co.	C. E. Wilbour, President.	10,293.83
	2526	New York Printing Co.	C. E. Wilbour, President.	103,407.65
	2527	Transcript Association.	C. E. Wilbour, President.	27,846.90
	2528	Transcript Association.	C. E. Wilbour, President.	1,422.45
	2529	Transcript Association.	C. E. Wilbour, President.	5,768.21
	2530	The Mfg. Stationers' Co.	C. E. Wilbour, Treasurer.	15,841.55
	2531	The Mfg. Stationers' Co.	C. E. Wilbour, Treasurer.	43,479.81
				$384,395.19

June 7, Printing Company gave check	$104,333.64
June 8, Wm. M. Tweed deposited check	104,333.64

XXIX.

In the proceedings instituted by the advice of Mr. Tilden and the late Charles O'Conor in the Supreme Court of the State against Tweed, Connolly, Fields, and the Mayor, Aldermen, and Commonalty of the city of New York and others, the defendants demurred to the complaint of the People on the ground that the Attorney-General could not institute proceedings in the name of the People of the State against the defendants, inasmuch as the People of the State had not been aggrieved, and therefore had no cause of action. The demurrer was overruled, and the defendants appealed. On the appeal, Mr. Tilden, at the request of Mr. O'Conor, took part in the argument against sustaining the appeal from the decision overruling the demurrer, July 17, 1872. Mr. Tilden devoted himself specially to a review of the English cases in which the law officers of the Crown had taken cognizance of municipal abuses.

MUNICIPAL ABUSES. — THE STATE AGGRIEVED. — ARGUMENT SUSTAINING THE DEMURRER.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS, *against* WILLIAM M. TWEED AND OTHERS, DEFENDANTS. — THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS, *against* RICHARD B. CONNOLLY, DEFENDANT. — THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS, *against* THOMAS C. FIELDS AND THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK, DEFENDANTS.

If your Honors please, —

IT was not until Thursday afternoon that my distinguished friend the leading counsel for the People intimated to me a desire that I should attend here in this case. I answered him that I did not feel myself to be in a situation to decline any service he might impose upon me. Considering that he, in the fulness of the renown of his professional career, has stood for the People in this controversy, without fee and without thought of reward, during the last six or eight months, I deemed that the principle of equitable contribution would apply to any other public-spirited citizen to whom he should call for aid. I do not mean by this suggestion to intimate at all that I think he had occasion for anything further than perhaps the companionship which for a considerable period of time has existed between us; for, although greatly outnumbered, it is not possible for him and for his able junior to be overmatched in this controversy. I shall therefore confine myself to the statement of a few general views, and shall call your Honors' attention to some cases in the English courts, in the highest courts of equity, which

have been acted upon by men of the greatest renown in the Chancery jurisprudence of England for the last seventy years, — precisely in point for us in this matter.

The transaction out of which this controversy grows, your Honors are already sufficiently acquainted with. In substance it can be stated in a sentence or two, and is this: Three State commissioners, appointed by an Act of the legislative bodies of this State, obtained possession, in the manner pointed out in this statute, of $6,312,000, and divided nearly the entire amount among themselves and their confederates and co-conspirators. The question is, Who has the rightful authority to call these men to account?

If your Honors please, I say, in the first place, that these men, acting in this capacity, are not city officers or county officers, but are State officers, and nothing else. The Act says, "the present President of the Board of Supervisors," — that is, the President of the Board of Supervisors at the time the Act was passed, in April. In the fore part of July that Board of Supervisors was abolished, and its President with it; and yet the functions to be performed under this commission of the State were but partially completed. "The present President of the Board of Supervisors" was a mode of describing an individual man by the name of his office. The authors of that statute, looking forward to the crime that they were concocting, were too shamefaced to place in the statute the name of the individual, William M. Tweed. They resorted to terms of description, identifying the individual by the office he held at the time of the passage of the Act, and said, "the present President of the Board of Supervisors."

One of the other two officers was the Comptroller. The comptroller of what? The comptroller of the Mayor, Aldermen, and Commonalty of the city of New York. The third was the Mayor of the same corporate body.

These officers were not county officers at all; they were city officers. They were described by the names of their offices; and the legal effect of the Act was that these two individuals —

Richard B. Connolly and A. Oakey Hall — should constitute a commission with William M. Tweed, and that the three should be State commissioners to perform the functions committed to them by the statute of the State.

Now I call your Honors' attention to the fact that everything in this statute is mandatory upon every officer whose agency was necessary to consummate the transaction, except in reference to how much money these three commissioners should award upon the pretended claims, and how much money they should raise and pay out. Every other act and thing, from the beginning to the end, was mandatory. And why? Because these men, partners in this fraud, co-conspirators plotting to get possession of this money in order to divide it, would not trust to any man's discretion, or to any board or public body's discretion, in any one step necessary in the progress from the inception to the consummation of their crime.

It is in evidence that the public officer who is the defendant in this action [Mr. Tweed] received about a quarter of this whole fund. It is traced into his possession; brought home to him; found upon him. Now, if your Honors please, suppose the Board of Supervisors had thought it worth while to exercise any control over Mr. Tweed in his action under this statute, could they have done it? Could they have exercised a control over Mr. Connolly or over Mayor Hall? It was not to Mr. Tweed in his official capacity as president of the Board of Supervisors, subject to orders, instructions, or control of that Board, — it was not to these men in their character as officers of any public board of the county or city that these functions were committed; it was to these men in their capacity as commissioners of the State, and in that capacity alone, that any power was conferred or any duty imposed. My learned friend [Mr. Peckham] calls my attention to the act, the only formal act ever done by this Board of Commissioners, on the only occasion when they ever met together. I believe the minutes of their doings in the case were drawn by Mayor Hall. In this record they say: "The undersigned meet as

commissioners, under and by virtue of Section 4 of the Laws of 1870." Your Honors, this view of the character in which these men acted is so simple, so plain and indisputable, that it seems almost ridiculous to cite an authority in its support; and yet it does happen that there exists in the books an authority as to this exact point from a distinguished judge of the Supreme Court of the United States. That occurred in this way: A statute of the State of Wisconsin was enacted conferring certain functions upon several persons in the County of Sheboygan in regard to the creation and issue of county bonds of that county. The case is the County of Sheboygan *vs.* Parker, reported in 3 Wallace, p. 396. The question arose as to the character in which these officers acted. The Constitution of Wisconsin requires that county officers should be appointed in a particular manner. Judge Grier, speaking for the Supreme Court of the United States, said that these men were commissioners of the State of Wisconsin under this statute, and were not county officers. It was precisely such a statute as this is, except it did require the assent of a vote of the electors of the county to authorize the issue of the bonds; this statute required nobody's assent.

Now, if your Honors please, who has the right to hold to account State officers acting under a State commission? Is it the Board of Supervisors of the County of New York? Where did they get any such authority? Where did they derive such a commission?

Again, who are the parties injured? I do not deem it necessary to comment upon this part of the case, for it has been ably and exhaustively discussed by the gentleman [Mr. O'Conor] who preceded me. Who is the party injured? Is it the supervisors? How are they injured? In what are they injured? My learned friend [Mr. O'Conor] has justly and truly said that the real party injured is the taxpayers for the last year, this year, and future years, running up to thirty years, who will be charged annually with the payment of the interest on this amount, and finally with the payment of the principal, — tax-

payers not *in esse*, excepting a very small number of them. Future tax-payers. Who can represent them? The Board of Supervisors? Again I demand, where is their commission? Where is the authority from the State giving them the right or imposing on them the duty of representing a body which, according to all the settled principles of equity jurisprudence, in the absence of a statute providing otherwise, can be represented alone by the State acting in its sovereign capacity?

I say, then, that by reason of the nature of the whole transaction, by reason of the legal character of the officers committing the offence, and by reason of the legal character and the position of the parties wronged, the State, and the State alone, is entitled to seek redress for those wrongs, whether against the party committing the wrong or in behalf of the parties injured.

A statute which I had the honor to submit to the last Assembly has been referred to by one of the counsel for the defendant; and I may say a word regarding it in this connection. In the first place, that Act was drawn by myself, without any suggestion from my friend Mr. O'Conor, and so far as it acted upon the existing suits, not without a disdainful repugnance on his part from the beginning to the end, — induced, I suppose, by a supreme confidence he had, and has, in the power under existing laws to maintain this action without any legislative aid. It was drawn — the 9th section of it, that applying the preceding sections to existing suits, I mean — by Mr. Peckham and myself, and added after the body of the Act had been framed. I have no doubt that it is perfectly competent for the legislative power to act upon a remedy in suits already in existence. It constantly does so; it does so at every legislative session: and in some respects the provisions of that Act were desirable and valuable in their application to existing suits. Among other things it provided for this very case, — that whereas, when the money should be recovered, legislation may be necessary, whether the money be recovered by the State or by the county, to enable a proper disposition of the money to be made, it con-

ferred that authority upon the Court. Another thing it did was to provide for expedition in proceedings in such cases. Another thing it did was to provide for the hearing of such cases by judges elected outside of the district where these cases arise. On reflection, without any doubt, and fully possessed of the views and purposes with which the present judicial establishment was inaugurated and formed, I assert that those provisions are in accordance with its spirit and philosophy. We were told in the Convention of 1846 that one great object to be attained was that there should not grow up between the judges and local suitors, or local attorneys or counsel, those relations which, in some cases, in a very slight degree, had been complained of. It was the theory of that system that the judges of the Supreme Court should circulate through the State. The first Judiciary Act, by which the present Supreme Court was organized, provided that each judge of the Supreme Court should spend but a proportionate part of his time in the district in which he was elected, and an equal proportion in as many of the districts as there were years in his term of office. It was from this principle that these provisions of the Act were deduced. Another thing that Act did was that it provided for an attachment of the property of persons committing frauds against the public. It provided more perfect and definite remedies — applicable, of course, only to the future—in criminal proceedings against such persons. I do not shrink from any responsibility of that Act; I accept it. I entertain no manner of doubt that if my hands had not been too full, it would have been to-day a law of the land, the money of all the conspirators to the contrary notwithstanding, and all other influences that were brought to bear to delay and to defeat it. But, if your Honors please, I was compelled, as it has often happened in my life, to choose between what I would concentrate upon and endeavor to carry by main strength, and what to leave to take its course; and I was obliged to leave this Bill to itself. I had not then, and I have not now, any doubt of the jurisdiction of this Court, or that, so far as that Act might seem to confer jurisdiction, it

was merely declaratory of the law as it now stands. That is the proposition I now propose to maintain in this argument, and I propose to maintain it on the authority of the adjudged cases in England, — cases that embrace, concurring in their conclusions, a larger body of equity lawyers of great renown than perhaps can be found on any single question ever addressed to any judicial tribunal.

The gentlemen on the other side have submitted a written opinion which has been put in print, — drawn, I suppose, by the gentleman who first signs it, Mr. Curtis, and then signed by the other gentleman, Mr. Porter. Mr. Porter, I am bound to presume, and do believe, signed that without any great consideration, and perhaps without any examination of it. This opinion was submitted on a former occasion. It is submitted again now; and I wish to draw your Honors' attention to some portions of it. A greater misconstruction, a more utter perversion of the English cases I never happened to meet with on any occasion.

Now, if your Honors please, my proposition is this, — and I do not speak of cases of nuisance; I do not speak of cases of mere excess of power by a public officer; I do not speak of the principle of other cases in which this jurisdiction has been asserted: but I desire to confine myself to the precise present case, which is the case of a fraudulent breach of trust by a public officer, State or municipal, or by a municipal corporation; and I say that it is to-day the settled law of England and of this State that this Court has jurisdiction in all such cases upon the suit of the People.

Now, if your Honors please, the first case cited by Mr. Curtis in his opinion is the case of the Attorney-General *vs.* Brown, reported in 1 Swanston, p. 265. The attempt by Mr. Curtis is to maintain that this jurisdiction exists only in cases of charitable trusts. I meet that by asserting that this jurisdiction exists in all cases of public trusts; and whether you get at that result by saying that all public trusts are, in the meaning of the statute of Elizabeth, charitable trusts, or whether you class-

ify them separately, and then assert the jurisdiction specifically as to public trusts, the effect is exactly the same. Mr. Curtis represents Lord Eldon in that case as confining his action to the ground that it was the case of a charitable trust; and he mentions that Sir Samuel Romilly was in the case, and says that it was not contended that the jurisdiction went beyond charitable trusts. If your Honors please, I hold the volume in my hand, and in Sir Samuel Romilly's argument there are these words: —

"It is not necessary that the purpose be charitable. In describing the practice of the Court on the subject of informations, Lord Redesdale mentions charities only as one instance among many of the cases in which that remedy is allowed. Wherever a fund is appropriated to objects beneficial to the nation at large, any individual is entitled to the aid of the attorney-general for compelling its due administration."

That is in direct contradiction to the statement contained of this opinion submitted to the Court and relied upon in this case. The counsel on the other side, answering Sir Samuel Romilly, said: —

"The authority of Lord Redesdale is then alleged, that charities form only one of many instances in which the attorney-general may sustain an information. Lord Redesdale has not assumed to declare the law; he undertook no more than to collect decided cases. Has he cited any case similar to the present?"

At the close of the argument Lord Eldon said: —

"It is said that this is not a charitable case, and I am not disposed at present to consider it such. . . . And then comes the question, — on which I am not at present prepared to say that there is not much positive authority, — whether, where a duty is laid on all the King's subjects in respect of their trade, to be raised for particular purposes, the public, and in the right of the public the Crown, have not an interest, if the duties are levied improperly, or, if properly levied, improperly applied, which the attorney-general is entitled to protect."

The fund was created by a tax on all coal taken into the town of Brighton for sale. The tax was said by Lord Eldon

to be imposed in form on all the public who resorted there by sea or land to sell coal, but eventually to fall upon the inhabitants of that town. These expressions of Lord Eldon were on the argument; they proceed distinctly on the ground that the case is simply one of public trust. Eventually, when he came to decide the case, he did arrive at the conclusion that the use was charitable.

Sir John Leach, who argued the case against the information, afterward became Vice-Chancellor, and while such, decided the case of the Attorney-General *vs.* Healis, reported in 2 Simons & Stuart, p. 77. In that case he held that the use was charitable, and sustained the injunction. But while the case was thus disposed of, in his opinion he said, *obiter*, that the criterion was not the purpose to which the money was to be applied, but the sources from which the money was derived; and that money derived from taxes could not be held to be a charitable use, though it was a public use. This observation was of no authority at the time it was made; it is inconsistent with the doctrine of all the leading cases, was repudiated as often as it was mentioned in them, and was at last elaborately discussed and completely exploded in Attorney-General *vs.* Eastlake, 11 Hare, p. 205.

The whole subject came in review in the House of Lords in 1827. I refer to the case of the Attorney-General *vs.* The Mayor of Dublin, reported in 1 Bligh, New Series, p. 312. Mr. Curtis tells us what Lord Chancellor Eldon meant in the case of the Attorney-General *vs.* Brown, and he tells us that Lord Chancellor Eldon meant directly the reverse of what that great chancery judge himself states he did mean while delivering his opinion in this Dublin case. In the year 1827, forty-five years ago, Lord Eldon put on record what he did mean in that anterior case; and yet a paper, containing such representations as this opinion of Mr. Curtis, is submitted to the Court, presuming to speculate upon the probability that your Honors would not have time to analyze these cases, and might be misled by the fallacious statements about them contained in the

opinion. It is for that reason that, coming late into this argument, I brought these cases with me, that in the two days I have spent in the country I might look them over and mark the passages necessary to be specially called to your attention, in order to appeal to the true and authoritative witnesses as to what those cases have decided, — to appeal from the erroneous, uncandid, and deceptive representations of these cases to the recorded evidence of what they did determine.

The Dublin case, which came up in the House of Lords, was acted on by three men celebrated in equity jurisprudence, — John, Lord Eldon, Lord Lyndhurst, and Lord Redesdale (formerly Sir John Mitford, the author of Mitford's "Pleadings in Equity"). It was elaborately argued, it was thoroughly discussed by these great jurists, and they have given here the results of their investigations and of their consideration.

Now the first thing to which your attention is called is as to what the case of the Attorney-General *vs.* Brown did decide. At the close of the argument in the Dublin case Lord Eldon said: —

"The case of the Attorney-General *vs.* Brown, whether ill or well decided, was not decided solely upon the ground that it was a charitable use. Upon reflection, I thought it so; but the judgment rested upon other grounds."

You will see, by analysis of the very imperfect report of that case, by attention to the passages I have read, it did rest upon other grounds.

"In the Attorney-General *vs.* Brown the question was much argued whether the fund was to be applied to a charitable use. After the argument it appeared to me that it was a charitable use. But that was not the ground of the judgment in that case, whether it was well or ill founded; because I was of opinion that the Court of Chancery had jurisdiction in that case, whether it was or was not a charitable use."

The case was held under advisement, and discussed again on the 11th of May, 1827, when the Earl of Eldon gave an opinion. I suppose he had in the mean time gone out of office as Lord

Chancellor, and had been succeeded by Lord Lyndhurst. On p. 356 he repeats what he said on the former occasion,— that the case of the Attorney-General *vs.* Brown was not decided on the ground that it was a charitable use, but on the ground that it was a public use. At the suggestion of the Lord Chancellor (Lyndhurst), Lord Redesdale looked into the old authorities; and after tracing a very ancient remedy, which had been gradually supplanted by a proceeding by information in equity, he deduced the jurisdiction of the Court in these cases, and the right of the Crown to proceed by information by the Attorney-General, from a course of established practice in equity tribunals which began long anterior to the Statute of Charitable Uses.

"The practice of proceeding by information rather than by the writ of account has prevailed in consequence of the difficulty of proceeding under the writ. That persons under such circumstances should be rendered accountable by virtue of the writ is said to be according to the law and custom of England.

"The practice of proceeding by information, or by bill filed in a court of equity, has arisen from the difficulties attending the process by writ. The King, as *parens patriæ*, may institute a suit by his attorney-general. It is not essential that relators should join in the suit; but it is the common course to join them in the suit, in order that the defendants may not be oppressed without remedy by vexatious suits, the relators being liable to costs, which are never paid by the Crown."

The principal question discussed in that case was whether, there being some special statutory remedy, it operated to exclude the jurisdiction of the court of equity. This seemed to be the only ground of doubting the jurisdiction supposed to be worthy of consideration.

Mr. Field. Will you be good enough to state whether or not these actions were actions at law for the recovery of money to be paid to the Crown, or whether every one of them is not an action in equity to protect the application of that trust simply in the ordinary exercise of equitable jurisdiction; and whether you consider the suit now before this Court an action in equity?

Mr. O'Conor. It is an action for money, which in England would probably have been prosecuted in a court of equity. It is here prosecuted in the only court of equity we have.

I am happy to be called upon at this stage of the discussion to say what I know upon this subject. The prayer of the bill in the Dublin case is, — first, that defendants be declared trustees of the rates and rents which constituted the fund, and that the trusts be carried into execution; second, that there be an accounting as well in respect to the income as to any charges upon that fund; third, that a proper application of the fund be ordered; fourth, that the wrong-doers be decreed to replace the money they had wrongfully taken or misapplied; fifth, that some proper person be appointed to receive the rates or rents.

This case to which I have referred, as your Honors will see, was an action against the corporation of Dublin, the capital of Ireland, and now a city of a quarter of a million of inhabitants. In Lord Redesdale's opinion he uses a phrase to which I shall call the attention of the Court: —

"It is expedient in such cases that there should be a remedy, and highly important that persons in the receipt of public money should know that they are liable to account in a court of equity as well for the misapplication of, as for withholding, the funds. Suppose even the case of a public accountant, clearly within the Act, who, having embezzled or misemployed the public moneys, had rendered accounts which were imperfect or fabricated, could not the attorney-general, upon discovery of the fact or the fraud, proceed by information to recover the moneys so fraudulently withheld or misappropriated?"

I call your Honors' attention to the circumstance that a phrase is used there which would be perfectly proper in this case if this were an action at law instead of being an action under the code, — "to recover moneys." Our action, they say, is to recover moneys. If your Honors please, in all these cases in equity there is a prayer for the restoration of the money; whether it be to recover money, or to have it paid back, or refunded, or paid over, it is in substance the same thing. I con-

fess it has surprised me not a little that the author of the code [Mr. Field], which has been held out to us for the last quarter of a century covered with glowing anticipations that we should be no longer, in actions like this, talking about the question whether this is an "action at law" or "an action in equity," and that it should be sufficient that the specific relief should be described and stated, — I say it has surprised me that he should endeavor to entangle this case in the meshes of the old technical forms of actions now abolished, and to aid the defence by setting up the monstrous pretence that we must go out of this court of law (as if this were a mere court of law in the old sense) and go into a court of equity, if such a thing can be found in this State, forgetting that this Court embraces all the ancient equity jurisdiction, — that he should revive at this moment, to startle us, the ghost of the ancient practice which his hands have — shall I say murdered?

Mr. Field. You do not apprehend the question. If it is an equitable suit to get money, the county is not made a party. Is there any case you can find in the English courts in which, when a trust is administered, or persons called to account, the party to receive is not made a party? That is the difference between equitable relief and legal relief. I affirm there is not a case that you can find in which the English Crown has sought to recover back money from a public officer or corporate body.

I will answer that in a moment. My friend is in error; he is totally wrong. There is an important class of cases where the sovereign intervenes to represent the injured persons for the very reason that nobody else can represent them and they cannot be made parties, — where they cannot come into court, where they cannot be ascertained, where perhaps they are not in being. It is exactly in that case that the sovereign, through the attorney-general, comes into court to protect these undefined, and perhaps undefinable, rights which nobody else can protect.

I speak not of cases where there is a public authority which is legally competent to represent the injured persons, but which

fails of its duty, which is in default. I speak not of cases where there exists concurrently a right in some public authority to represent the injured persons, and also a right in the sovereign to represent those persons. What I now speak of is cases where the injured persons cannot be made parties, and nobody has been commissioned by the sovereign to represent them. Then, of necessity, I say, by the elementary principles of English and American jurisprudence, the sovereign must and will represent the injured persons in every case which is of the nature of a public wrong. The Crown in England, the People in this State, will come into court by their attorney-general to represent and assert the rights of those injured persons. All the cases in England are cases in which the injured persons are rate-payers, as they are called; they are what we call taxpayers. All the English cases are taxpayers' cases.

In the Dublin case the wrong-doers were the corporation of that city. The wrong was a breach of trust in the misapplication of public money. The injured persons were the existing tax or rate payers, and, in a far greater degree, the future rate or tax payers. The Crown, by its attorney-general, came into court to represent the existing and future taxpayers. The words of Lord Redesdale almost seem to imply that the existing taxpayers might of themselves have a remedy. I presume his exact meaning is that they might become relators. The persons on whom the taxes were in future to be levied could be protected only by information by the Crown.

I call your special attention to the words of Lord Redesdale:

"Supposing the debt not to be extinct by the collection, have not the persons upon whom the rates are levied, and has not the Crown on behalf of those persons from whom they may be in future levied, a right to see that the funds are properly applied according to the directions of the Act? It has been said that such a right vests in the attorney-general by virtue of his office, and that the Court of Exchequer, upon such information, has jurisdiction to order such person to account and pay the money. A similar remedy is applicable, as I conceive, to any other person having

the trust and management of public money — any public accountant of any description."

There is an answer to the criticism of the learned counsel. How can the persons on whom these rates are in the future to be levied be made parties to this action? My learned friend is answered in this case, and answered by Lord Redesdale. Again said that great jurist, —

"If persons are entitled to the benefit of a trust of any description, — for instance, persons who are interested in a fund which for a certain period is to be applied to the extinction of a debt, — are they not to have a right to call, from time to time, for an account, for the purpose of seeing that every sum as it has been received should be applied according to the exigency of the particular case, as in the extinction of so much of the principal of the debt, — to which it could be applied, and consequently in extinction of so much of the interest, reducing the amount of the interest by degrees, and thus effecting the earlier reduction of the principal of the debt?"

I wish to call your Honors' attention to two other passages. In reply to the attempt to ascribe the origin of the jurisdiction over breaches of trust to the statute of Elizabeth, he said:

"We are referred to the statute of Elizabeth with respect to charitable uses as creating a new law upon the subject of charitable uses. That statute only created a new jurisdiction, it created no new law; it created a new and ancillary jurisdiction, — a jurisdiction borrowed from the statutes which I have mentioned."

His conclusions were summed up as follows: —

"I therefore think your Lordships ought now to proceed to reverse the judgment [dismissing the information and ordering the relators to pay the costs] which has been given by the Court of Chancery in Ireland, and to direct, on the contrary, an account to be taken of the receipt and application of the duties in question, according to the exigencies of the particular case, following nearly the terms of the prayer of the information."

Your Honors will see that Lord Redesdale, with the concurrence of Lord Lyndhurst, then Chancellor, and Lord Eldon, who was Chancellor when the case was heard, sustained the

prayer which I have read. The case, with all the weight of these illustrious jurists and of the highest Court of Equity in England, applies the doctrine it asserts to all cases of breaches of any public trust as well as of strictly charitable trusts; it affirms the jurisdiction to afford a complete remedy by decreeing a recovery, — restoration and just application of the money or property misapplied, — and it declares the right of the sovereign (the Crown in England, the People in the State of New York) to claim and enforce the remedy.

Some time after the decision in this case there happened in England a change in regard to municipal bodies which excited great attention at the time, and of which everybody acquainted with the literature, the politics, or the jurisprudence of that country must have heard. It was the Municipal Reform Act. I think it was passed in the time of Lord Melbourne. It was considered equally as great a reform as the Parliamentary Reform Act which had been carried through Parliament by the Administration of Earl Grey. It passed in the year 1835. It did two things — made two great changes. In the first place, whereas municipal bodies had been generally close corporations, — self-elected bodies, — they were made representative municipalities. In the next place, whereas certain portions of the funds of these bodies — indeed all of their funds which were not specially excepted — had been held to be the private property of the corporation, and as such, of course, involved no trust, and were free from the cognizance of the Court of Chancery, a general provision was enacted by which these corporate funds became public funds. They were placed, as my friend [Mr. O'Conor] suggests to me now, upon the American basis; that is to say, all corporate funds, from whatever source derived, by taxation in any form, or in any other mode of revenue, were public funds held for municipal purposes, more or less restricted.

Here is a very gross perversion by this learned opinion of which we have heard so much. It is gravely asserted in that opinion that the origin of the jurisdiction in these cases is in

the Act of 1835; whereas, in truth, that jurisdiction arose simply because the character of the holding of the funds was changed, and instead of remaining private funds they became trust funds, and were thus brought within a general established jurisdiction of the courts of equity which had existed from time immemorial. There was no change in the nature of the jurisdiction or of the principles on which it was founded, or of the rules by which it was governed, as your Honors will see when you refer to the cases which arose after the Municipal Reform Act. There is no intimation in them of any change of that kind. But the Dublin case is cited precisely as though the law ran along in a smooth, unbroken current, unchanged in anything except the different subjects that were brought within the operation of the law by a change in the character of the subject, without any change in the character of the jurisdiction.

This, if your Honors please, was the case of the Attorney-General *vs.* the Mayor of Liverpool, reported in 1 Mylne & Craig, p. 171. We have dealt with Dublin, the capital of Ireland, a city of two hundred and fifty thousand population. We come now to the city of Liverpool, the great mart of commerce in England, with its population of half a million. This case first arose on an application for an injunction. That was heard by the Master of the Rolls, Sir C. C. Pepys, who — perhaps the year after — became High Chancellor as Lord Cottenham. The case arose in this way: The corporation of Liverpool had been in the habit, out of its corporate funds, which were held as private property within the sole and absolute control of the corporation, and not as trust property, of paying certain stipends to the clergymen of Liverpool. This Act, changing the character of the municipal funds, and to some extent the organization of municipal bodies, having been passed, and there being a desire that the appropriation of money to these clergymen should not cease, the corporation of Liverpool proposed to transfer of their corporate funds and property, I think, something like half a million to

trustees, to be held by these trustees for the benefit of these clergymen.

It was objected that, inasmuch as the Act had already passed, although it had not gone into operation, the trust related back and operated upon these funds, and that such an assignment would not be valid. As I before said, it came before the Master of the Rolls on an application for an injunction; and (p. 201) the Master of the Rolls said: —

"Cases were cited to show (what cases were not required to prove) that the Court has no jurisdiction over a corporation which has control over its own property; but although a body having a corporate existence is capable of acquiring and possessing property, and therefore also of disposing of it, if property is held by a corporation as a trustee, if the corporation holds it clothed with public duties, the Court has always asserted its right to interfere. In the case referred to, which was argued in the House of Lords, this proposition was assumed throughout. In that case the corporation of Dublin were trustees of certain funds for the purpose of supplying the city of Dublin with water; and nobody ever questioned the right of a Court of Equity to interpose in order to see that the public duties were discharged and that the trusts upon which the corporation held the property were duly performed. Now, under this Act, the right of property in the corporation is entirely altered. That which may have heretofore constituted their own property, and which they may have held as owners, they now hold, by virtue of the Act, subject to certain duties; and it would indeed be a singularly strong case in which the Court should refuse to exercise its jurisdiction to prevent a breach of trust, supposing a case of breach of trust to be made out against them."

If your Honors please, there is one other thing I desire to call your attention to in this case; and that is, that trust funds which have been raised and expended by the corporation of the city of New York have been raised in pursuance of an annual tax levy. These funds have been parcelled out by the statute giving power to raise them, for the specific purposes to which they were to be applied. The Act has generally been a long Act, enumerating with much particularity the purposes for which the taxes were to be raised and applied. In this case

the power to use for municipal purposes was broader than that which has been customary with the taxes levied in the city of New York. I wish to take the time of the Court only for a single moment on this topic. I read from 1 Mylne & Craig the abstract of the provision of the Municipal Reform Act creating the trust: —

"The income and annual produce of all the property of any body corporate named in conjunction with such borough in Schedule A should be paid to the treasurer of such borough; and that all the moneys which he should so receive should be carried by him to the account of a fund, to be called 'The Borough Fund.' and that such fund, subject to the payment of any lawful debt due from such body corporate, and saving the claims of all persons upon the real and personal estate of such body corporate, should be applied to the payment of the salaries of the mayor of the borough and other officers in such Act mentioned, and also toward the payment of divers expenses therein mentioned, connected with the municipal regulations to be made by virtue of the Act, and with the police and the administration of justice in such borough, and of all other expenses not therein otherwise provided for, which should be necessarily incurred in carrying into effect the provisions of the Act; and that in case the said borough fund should be more than sufficient for the purposes to which the same was by the Act made applicable, the surplus thereof should be applied, under the direction of the council, to the public benefit of the inhabitants and the improvement of the borough; and in case the borough fund should not be sufficient for these purposes, the council of such borough was thereby authorized and required to order a borough rate, in the nature of a county rate, to be made within the borough for the purpose of raising so much money as, in addition to such fund, would be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of the Act."

There is a broader power of application of a trust fund, and a larger discretion than ever existed under any annual tax-levy of the corporation of the city of New York. The Vice-Chancellor denied the injunction on this ground, — that if the corporation should have conveyed this fund which they proposed to alienate, or rather, that portion of the fund,

to trustees, it would still be within the control of the Court, and an injunction was unnecessary.

The information was amended, and the case came on again; the trustees to whom the fund had been conveyed, the clergymen who were the beneficiaries of that fund, and the mayor, aldermen, and burgesses of Liverpool being parties defendant, and the relief asked being to set aside the conveyance and reclaim the fund. That is reported in 1 Keene, p. 513, Attorney-General *vs.* Aspinall. The Vice-Chancellor allowed the demurrer, and the case went on appeal to the Chancellor, and is reported in 2 Mylne & Craig, p. 613. At p. 618 the opinion of the Court below was overruled.

Justice MILLER. How was it decided below?

The demurrer was sustained, not from any defect of jurisdiction, but on the ground of a want of equity in the bill. The Chancellor was Lord Cottenham; and on the appeal the doctrine, that this municipal or borough fund was a trust property within the jurisdiction of the Court by which relief might be given on the application of the attorney-general, was sustained. Then this circumstance happened, — in the mean time there had been a new election of the town council; and it was alleged that the newly chosen officers of the council of Liverpool were disposed to affirm the act of their predecessors, and not to sue, not to resist that action going into effect. As to that, Lord Cottenham said, on p. 633: —

"It has been said that the fair inference from the language of this charge is that the town council approve of the appropriation. [That is, the new town council.] I cannot so understand it, nor do I feel at liberty, upon a demurrer, to assume that such is the case, against the plain language of the charge. Supposing, however, that the fact were so, and were so charged, I cannot think that such opinion or such conduct of the town council would deprive the attorney-general of the right to file this information according to the facts stated in it."

That great jurist had already declared (p. 627) that the "facts stated upon the information constitute a case which

entitles the attorney-general, on behalf of the inhabitants, to demand the interference of the Court, unless its jurisdiction had been taken away by the Act of Parliament." He held that Parliament had not deprived it of jurisdiction.

Mr. FIELD. What year was that in?

In the year 1837. The next case to which I refer is the Attorney-General *vs.* Wilson, reported in 1 Craig & Phillips, p. 1. That was a similar case, except that the appropriation complained of was made to compensate certain officers who were supposed not to have been sufficiently paid by the old authorities of the corporation. The opinion was delivered by the Lord Chancellor, who, I suppose, was Lord Cottenham. In this case there was this peculiarity, — the election of the corporation had taken place as in the other case; but instead of affirming the acts of their predecessors, as in the other case, the new officers came into the suit as relators and as co-plaintiffs with the attorney-general, and complained of the acts of their predecessors. The objection was made that the corporation under these successive councils was to be considered as a continuous and the same body, and could not complain of its own acts; but on that point the Lord Chancellor said, on p. 23: —

"What the present plaintiffs, the corporation, complain of, is that certain persons, members of the corporation at a former time, fraudulently and illegally used the power and authority of the corporation for the purpose of depriving it of property to which it was by law entitled. Is it to be said that the corporation is therefore without remedy? It is true that, in future, all such property being in trust for the benefit of the public, the attorney-general may assert the right of the public in an information; but if, before the Act passed, a corporation might, in a proper case, institute a suit for the purpose of setting aside transactions fraudulent against it, though carried into effect in the name of the corporation, that right cannot be affected by the attorney-general having also a power to complain of the transaction."

Mr. O'Conor. The two rights of action were not inconsistent?

They were not inconsistent. By the change whereby the fund became a trust for the public instead of being private property, the attorney-general acquired, but the corporation did not lose, the right of action.

Mr. O'Conor. He says expressly that the success of the attorney-general's suit would put an end to the other.

The wrong-doers were officers of the borough of Leeds, — a borough, I suppose, of about two hundred and fifty thousand inhabitants.

The next case is that of the Attorney-General *vs.* The Corporation of Poole, reported in 2 Keene, p. 190. This differs from the other case in this respect, — the Municipal Corporation Act conferred authority upon the officers of the corporation (the incoming officers of the corporation, the newly elected officers) to make compensation for the loss of emoluments to certain officers whom they might remove from office. It gave them a certain discretion over the disposition of the corporate funds for this purpose. But there was held to be an abuse of discretion and breach of trust in this case; it was alleged that compensation had been given to an officer for the loss of an office which he continued to hold, and that other wrongs had been committed. The statute provided that a review of any allowance made should be had if one third of the town council objected to the allowance. The person attempting to secure the benefit of this compensation got eighty persons upon the list of burgesses by having their rates paid for them, and thus outnumbered the objectors by more than two thirds. No protest consequently could be effectually interposed, and the review provided by the statute was defeated.

I shall not detain your Honors to read this case, except a little on the last hearing. It appears in the different stages of the controversy in three reports, the first of which I have cited. Again, in 4 Mylne & Craig, p. 417. There the demurrer was allowed by the Chancellor, with leave to amend. The case

finally came to be heard on appeal in the House of Lords, and is reported in 8 Clarke & Finnelly, p. 409. At that time Lyndhurst was Lord High Chancellor, and he said: —

"I believe, Mr. Solicitor-General, we are all of opinion that this is a public trust; that these funds are held by the corporation subject to a trust, so as to give a court of equity jurisdiction over the subject-matter; and that these funds have been applied, at least in one instance, for a purpose to which they could not properly be applied, — namely, for the purpose of giving compensation for offices which the party still holds. It seems to me that that is a sufficient ground for maintaining the judgment of the Court of Chancery."

Lord Campbell said: —

"I see no ground for any difficulty upon the subject. Before the Municipal Corporations Regulation Act was passed, certainly the corporation property was not subject to any trust; the corporations might do with it whatever they chose; and, generally speaking, no relief could be obtained, either at law or in equity, for any misapplication of that property. The Municipal Corporations Act creates a trust for corporation purposes, — first, for certain specified purposes, and then, when these are answered, for other general purposes; for the benefit of the town. Then, this being trust property, there is nothing in the Act of Parliament to take away the jurisdiction which the Court of Chancery would otherwise have over it, or to take away the right which the subject would otherwise have to relief in a court of equity in case of any misapplication of the trust property. Now, looking at this information, the allegations in it state a case of fraud."

Lord Cottenham concurred; he said: —

"It having been established in the case of the Attorney-General *vs.* Aspinall — which I believe has not been brought here by appeal, and which has been followed by other cases in the Court of Chancery — that a borough fund is constituted a trust fund by this Act of Parliament, the question then is, whether the information states a case of breach of trust or improper dealing with that which is held by the corporation for public purposes, and therefore in that sense to be considered a trust fund and subject to the jurisdiction of the Court of Chancery, for the purpose of preventing breaches of trust and abuses of that sort of confidence, whether reposed in individuals or corporations. Looking at the information, we find that it states that which, beyond all doubt, would

constitute a great abuse of this property, and therefore a breach of trust. Nothing more is required to bring the case within the jurisdiction of the Court of Chancery; and therefore it becomes impossible that a general demurrer for want of jurisdiction can be supported."

That, if your Honors please, is a decision by the court of last resort. That opinion was held by three Lord High Chancellors, — Lord Lyndhurst, the then Lord Chancellor, Lord Cottenham, who had been and again became Chancellor, and Sir John Campbell, who afterward became Chancellor.

The next case I call your Honors' attention to is that of the Attorney-General *vs.* Eastlake, reported in 11 Hare, p. 205. The opinion in this case was delivered by Sir William Page Wood, one of the most eminent chancery jurists in England, and to-day, under the name of Lord Hatherley, Lord High Chancellor of England. The action was against the officers of the borough of Plymouth.

Your Honors will see that several of these cases are against statutory commissioners appointed as these three commissioners were in the case now before us. Some of them are against corporations having a specific trust under special provisions of law. The three I cited previous to the present are against three corporations having only that general trust which arises in all municipal corporations with respect to the funds of these corporations raised by taxes. This is a very interesting and instructive opinion. It goes over the cases erroneously represented by Mr. Curtis, and it explicitly denies the doctrine of Sir John Leach in the case of the Attorney-General *vs.* Healis, reported in 2 Simons & Stuart, — the doctrine which was overruled in the Dublin case, and is now again denied and elaborately refuted by this present Lord High Chancellor, but resuscitated by Mr. Curtis, and brought here and submitted by counsel for the information of this Court.

Lord Hatherley begins his opinion by declaring, p. 214:

"This case seems to me to be so entirely concluded by authority, that it is impossible for me to say that the attorney-general is not entitled to the injunction which is asked."

Then he says again, on p. 223: —

"It is then observed that the proceedings in the Attorney-General *vs.* the Corporation of Dublin was by information and bill. It does not appear to me to be necessary that there should be a bill in respect of those rates. No person can say that any given individual could be entitled to have the rates refunded. What is said is this: The attorney-general comes here to protect this fund; he says, 'I represent the public in respect of a fund which by law is applicable to the public purpose of lighting, and paving, and keeping up the other objects mentioned in this bill, which ought to be maintained; that it is a strictly charitable use in every sense which the Court would protect; and I insist on having no portion of that fund diverted for any other purpose.'"

He holds, also, that all public uses are charitable uses.

Mr. O'Conor. On p. 222 he refutes that idea with more explicitness; and I ask the Court to take reference to that precise place, and to another case where that exact thing is said, — that public and charitable uses are one and the same in this jurisdiction. One is the opinion of Judge Mullin himself in the case of the People *vs.* Miner, in 2 Lansing, p. 408, and the other is a decision by the Court of Appeals in the case of Sherwood *vs.* The American Bible Society, reported in 1 Keyes, p. 566, where this same question of judicial nomenclature, — that charity and public are synonymous, — is stated.

The next case I cite, if your Honors please, is the case of the Attorney-General *vs.* The Corporation of Belfast, reported in 4 Irish Chancery Reports, p. 119. That case arose in 1855. Ten years before, in 1845, Parliament passed an Act of municipal reform for Ireland identical with that of England, and this case arose under that Act. It is a very interesting case. There was a general power to make all sorts of improvements. There was some misapplication of funds, and the same general doctrines maintained in other cases were reasserted here: indeed, those doctrines have ceased to be controverted wherever the English law prevails. Belfast is a town of about one hundred and twenty five thousand people. My associate, Mr. Peckham, will comment upon that case.

I now conclude these references with the case of the Attorney-General *vs.* Berrett, reported in 3 Irish Reports, Equity, p. 393. This arose out of an Act for the improvement of the town of Kingstown; and the opinion, I think, was delivered by the Lord Chancellor, O'Hagan. In this case the commission acting had the power of audit, and the audit was reviewed. The act of audit was held to be null for bad faith. The doctrine is asserted that the parties committing the fraud are severally liable.

There is one other case I desire to refer to for another purpose; and that is the case of the Attorney-General *vs.* Compton, reported in 1 Younge & Collyer, p. 416. I read a passage in this case because the same question arose which has arisen in several of the other cases; that is to say, the question whether proceedings should be by way of bill or by way of information, or by way of bill and information. I suppose the proceeding by way of bill was where the party injured could himself come into court. The proceeding by way of information alone was where the party, not being able to come into court, was represented by the Crown or People, through the attorney-general. I read from the opinion: —

"These sums were part of a public fund in the hands of certain public officers, devoted to certain public purposes within a certain district, to which purposes it was the duty of those officers to apply them. They were in a sense trustees for that purpose; and if it were held that upon a misapplication of moneys so circumstanced it was not competent for a court of equity to interfere, I am not aware what civil remedy there would be in such a case. This is not a question of the legality of a rate, it is a question of the due application of moneys, the produce probably in part, but not wholly, of rates; though I think if it were wholly the produce of rates it would in substance make no difference for the present purpose."

The Healis case is again overruled. He says: —

"I say that if, the money having thus legally come to the hands of these public trustees, it were not competent to a court of equity to inquire into the due application of the money, there

would be an absence of civil remedy; for I have yet to learn the form of action in which a remedy for such a misapplication, producing the recovery of the money, could be obtained.

"But supposing the facts of this case to be satisfactorily made out, the competency of a court of equity to interfere is, I think, plain. The same state of circumstances appears to me to prove that the proceeding by information is proper. The right to the fund is not vested in any single individual or in any number of individuals. The beneficial right to the fund is in the public generally of that district for whose benefit, in a particular manner, it is to be applied by the public officers of that district. A mere bill, I apprehend, could not be sustained. Treating it as an ordinary civil demand between man and man, I am not aware that any number of parties who might be represented by given individuals on the record could be accurately represented as having, in themselves, beneficially, the entire interest and property in the thing demanded. That, therefore, the proceeding must be either wholly or partly by information cannot, I think, be doubted.

"It is said, however, that the proceeding ought to be by information and bill, and it is said so on this ground, — That there is an interest in some person in the due application of the money which renders it improper to proceed by way of information alone. That argument would dispose of ninety-nine cases out of a hundred of those suits which are daily brought before the court by information alone, because, in a proportion which I think may be represented as great as that which I have stated, the charities or public purposes which are to be administered are charities or public purposes for the benefit of specified individuals or specified classes, the members of which classes must have some interest in it. The rule, I apprehend, is this, — that where property affected by a trust for public purposes is in the hands of those who hold it devoted to that trust, it is the privilege of the public that the Crown should be entitled to intervene by its officer for the purpose of asserting, on behalf of the public generally, that public interest and that public right which probably no individual could be found willing effectually to assert, even if the interest were such as to allow it."

That is the third case where the relief is put on the ground that there were no private parties capable of coming into court and seeking relief, or that there were no private parties willing to do so, and that the relief therefore must be sought through the attorney-general.

I have but a very few observations to make on these authorities. I intended this morning to sit down and make a list of the illustrious jurists who have participated in the conclusions which I have read to the Court. I did not have time to do it; but I venture to say, from looking over these cases with such opportunities as I have had, that there are not less than from ten to twenty of the Lord High Chancellors of England joining in the opinions cited, embracing all those illustrious in English Chancery jurisprudence for the last seventy years, who, with one voice, have pronounced that every public trust, whether by an officer appointed by a statute or a municipal corporation, is subject to equity jurisdiction — as in the case of trusts generally — upon the suit of the attorney-general. In England it has ceased to be a matter of controversy. In regard to relators, these authorities agree that while persons may by the practice of the court be admitted as relators, it is not necessary that anybody should appear in that capacity. In respect to the relief granted, they assert the right to act by all the powers of a court of equity in respect to a trust; and particularly the doctrine is indicated in numerous instances that it is competent for the court to give effect to that remedy, without which all other remedies would be idle and useless, — a restoration of the funds to the proper parties entitled to their custody or possession; and beyond all doubt, if no party could be found through whom the proper application of the funds could be secured, the court would appoint an officer to receive them, or the court itself would receive them, to the end that there should not be a failure of justice. These principles are applied to the case of great active, populous communities like Dublin, Liverpool, Belfast, and Leeds, as well as other minor towns. The doctrines of these cases are the doctrines which I declared and asserted in the Bill which has been referred to as having been submitted to the Assembly, and they are doctrines which are to be maintained in this country by our courts if there is to be any such thing as accountability in municipal and local public officers.

If your Honors please, I sometimes hear talk about inconvenience in the administration of justice. What is the inconvenience to a people if there be a failure of justice? I entertain no manner of doubt that this jurisdiction, to its full length and breadth, asserted by us here on the authority of these adjudged cases, will be and must be maintained in this State. We cannot get along without such a jurisdiction. Even a change in a local election, in cases where money has been fraudulently misappropriated, is not a remedy. There must still be a jurisdiction competent to recover money or property abstracted, to redress breaches of trust, to punish wrong-doers; there must be a jurisdiction in the tribunals of the country adequate to deal with these cases. I do not doubt that that jurisdiction exists in this country; I do not doubt that to-day the doctrine we assert is just as much the law of this State as it is the law in England.

If your Honors please, I suppose I derived my impression that this is the law from having some knowledge at the time of the taxpayers' cases happening in the City and County of New York to which reference has been made, and some sort of familiarity with general ideas of equity jurisprudence as they prevail in the country from which we derive our system. That induced me to believe early and always that it was competent to maintain this action. My learned friend [Mr. O'Conor] stands here in this singular predicament. It was he more than anybody else who struck down the claim of the taxpayer to go into a court of equity and ask relief in behalf of himself and all others similarly situated, without joining the attorney-general. In one of the cases in which he argued that question (the case of Wetmore *vs.* Story, reported in 22 Barbour, p. 447), in asserting his view of the law with distinguished ability and research, and in a statement and classification of the law which still excites the unqualified admiration of the profession, — the argument to which Mr. Justice Harris refers in 7 Abbott, where he says he had read it with delight, and to which Mr. Justice Peabody refers in another case; an argument which has been

often cited as an authority, although it is of course not such technically speaking, — in that argument, in September, 1856, now sixteen years ago, he enumerated among the cases in which the People might intervene, —

"Breaches of public trusts by corporations or public bodies or functionaries might be restrained and corrected by equitable action prosecuted by the State in its own name or by its attorney-general."

Everywhere the attempt of the taxpayer to get relief in his own person was met by the allegation, "You must join the attorney-general." In all the books of this State that was said. From that time until to-day there has never been a whisper that if you did join the attorney-general your case would be just as remediless as it would be without him. In the two cases in the Court of Appeals, the case of Doolittle against the Supervisors of Broome County, and the case of Roosevelt against Draper, — in those two cases Judge Denio, who delivered the opinion of the Court, went through a long course of reasoning to establish that those actions could not be maintained by taxpayers without the intervention of the attorney-general; yet, nowhere exactly asserting, in so many words, that the actions could be maintained by and through the attorney-general, because he took that for granted, assumed it, founded upon it all his reasoning; he used language recognizing it as indisputable. Everybody admitted that proposition. Those who were against the taxpayers asserted it, and those who were for the taxpayers admitted it. The conviction that the action would be properly brought in that form was universal among the Bar. And now, sir, after we have been sixteen or eighteen years standing under that belief; after it has been denied on that ground again and again in all the cases in which relief was sought by the direct action of the taxpayers; when it has become so much a settled conclusion in this State (as I have shown it to be established in England by a series of great cases) that my learned friend seems almost

to disdain to argue the question here, — are we to be met by the allegation that the attorney-general has no standing in court to assert the right of taxpayers in such cases?

This case of the People *vs.* Miner, in 2d Lansing, my learned friend [Mr. O'Conor] has discussed perhaps sufficiently; but I wish to make a remark about it. The opinion begins with determining the question before the Court on the merits. Everything in the opinion after the second paragraph is *obiter*. It was an action by the attorney-general to restrain some commissioners, appointed by a statute to issue town bonds in aid of a railroad, from issuing the bonds because of some informality in the requisite preliminary steps. The question seems to be treated as one involving only a simple excess of power. The Court had held, in a former case brought by an individual taxpayer with reference to these bonds, that he could maintain the action, but that the facts in the case showed no equity for the relief claimed. Judge Mullin disposes of the case before the Court in a single sentence, declaring that it is unnecessary for him to repeat what he had said in the other case as to the merits of the action. He then for fifteen pages discusses the powers of the attorney-general in cases mostly dissimilar to the one before the Court.

The important and instructive leading case of the City of Dublin, in 1 Bligh, he says he could not find. The other English cases which he did find do not seem to have done him much good. He overruled, *obiter*, half a dozen Special Term decisions, two General Term decisions, two decisions of the Court of Appeals in which the opinions were given by Judge Denio speaking for the Court. I do not know whether he intended also to overrule these great English cases in the Court of Chancery and the House of Lords; but he concludes by drawing in his head like a turtle, drawing away not only from the case of public nuisances, but from the case of fraudulent breaches of public trusts such as we are now considering, abandoning his own argument as applying to such cases, next throwing over all instances of abuse of corporate powers, and

finally limiting the discussion to the case of a mere excess of power by the special statutory commissioners, which was really before the Court. He then uttered the general platitude that he thought the jurisdiction could not be carried to the extent intimated by some of the judges, and declared that he was opposed to a rule which should give a State officer the right to intermeddle with the affairs of every corporation in the State and would release the persons directly interested from seeing that the abuses were corrected. That is all this case results in, — if it, in truth, results in anything.

Thus we stand. We stand upon the established principles of equity jurisprudence. I shall not cite authorities to show that the attorney-general of this State has in such cases all the powers of the attorney-general of England.

The People of the State of New York have every right to sue which the Crown in England had when our jurisprudence branched off from that of our mother country, unless such right has been limited by a restrictive provision of the Constitution or of a statute; and the attorney-general has the same right to represent in such suits the People here as the same officer has to represent the Crown in England. The case of Miner elaborately argues to establish this proposition. It declares that the powers of our attorney-general have not been impaired by statute, and it asserts that he has all "the powers belonging to his office at common law, and such additional powers as the Legislature has seen fit to confer upon him" (2 Law, p. 399). The same doctrine is conceded by Mr. George Ticknor Curtis in the opinion which has been submitted by the counsel for the defendants. It is elaborately expounded and illustrated by Judge Duer in the case of Davis *vs.* The Mayor (2 Duer, p. 667). It is assumed as the law of this State in the numerous taxpayers' cases at General Term and in the Court of Appeals.

It would seem to me, if this right of the attorney-general were not challenged, that it is too elementary to be the subject of discussion. I suppose it is challenged here because to

challenge it is the only method of defence possible in this case after the discussion of these great English cases, and because there is an enormous fund of six millions which we know of in this case, and another six millions, and a third six millions, and then five millions, perhaps, and afterward five millions more, making, in all, some twenty-eight millions, which is too powerful an interest to remain undefended in this court. It will assert itself; the fund will defend itself by numerous, intelligent, and able counsel; it will defend itself by such opinions as the argument which has been submitted to your Honors; it will defend itself by such arguments as alone are possible; it will defend itself by such methods as it may: but, if your Honors please, it will not defend itself successfully.

I know that it may be desirable to have redress for a city accomplished by local authorities wherever that is possible. But that there should be a supervisory jurisdiction to which the aggrieved party in the municipality may go, under the discreet action, in a fit case, of the law officer of the State, is, I think, essential in that condition of society and civilization to which we have now arrived. Take, for illustration, the actual case before you. At the time this action was begun, all the local powers of government, legislative, executive, and to some extent judicial, were under the practical control of the persons against whom these actions are brought. To have had no other method of relief, no other resource than by the agency of local authorities so perverted, would have been a failure of justice. Fortunately, in the great principles of equity jurisprudence is found an armory of weapons suitable for almost every exigency of human society. In this case recourse was had to one of these weapons by my learned friend [Mr. O'Conor] most wisely, most justly, and, as I believe the result will prove, most successfully.

If your Honors please, it is familiar to all, in the case of private corporations, that one of the corporators may file a bill, in behalf of himself and others similarly situated, for relief. It has been decided, in respect to public corporations, that

the taxpayer, standing in a position analogous to that of the corporator in the private corporation, has not that remedy, but that in order to sue he must seek the aid of the attorney-general. That determination very much limits his remedies. It has been thought wise and necessary to limit these remedies for the purpose of avoiding a multiplicity of suits and of avoiding unduly harassing public officers. The question is now whether the sole remaining resource set up as a shield by the wise jurisprudence of our ancestors and of the courts of our country is to be stricken down by your judgment and held to be of no avail. I cannot for a moment believe there is the slightest danger that you will come to such a conclusion; I cannot for a moment doubt that you will hold to the general principles which we have asserted as governing this question.

My general proposition is, that where the abuse of a public trust or breach of a public trust is committed by a statutory or other public officer appointed by the State, of course the remedy must be by the State, unless it has commissioned somebody else to seek the remedy, unless it has empowered somebody else to sue, unless it has given somebody else the custody or the title to the property taken away. Even in a case, as your Honors will have seen, where there is a competent authority to sue (but that is not in the present case), even where there is such a case, — I have cited two authorities which hold that a concurrent right of action still rests in the People or in the Crown, and that the attorney-general may bring the action. It is well established in equity jurisprudence that a very slight degree of default on the part of a private trustee will justify the *cestui que trust* in himself seeking the remedy. In some of the States — Pennsylvania, for instance — you do not go through the formality of alleging that the trustee has refused or failed to act. The *cestui que trust*, of his own motion, comes in on his own behalf. There is a Georgia case which holds that it is not necessary, even in a private trust, for a trustee to refuse to sue; it is enough that he omits to sue. My proposition, then, is, that even where there is a local body or authority

capable of suing, and it refuses or neglects to do so, or omits to do so, the attorney-general may come in and sue in behalf of the taxpayers. I state this proposition because it is abundantly established and vindicated in these great English cases I have cited, and because it is of vast importance to establish such a public principle and such a rule of jurisprudence. It is not necessary in the case before us to maintain that proposition in order to vindicate our right of action where a statutory officer, representing the State and commissioned by the State, has committed a fraudulent breach of trust in violation of a duty imposed upon him by the State; where the officer intrusted by the State with a special and temporary function has gone out of office, and the office and its function are extinct, and no decree for the application of the moneys by the officer originally intrusted with them will avail; where neither the supervisors of the county nor any other local authority was ever commissioned by the State to exercise any supervision or control over that officer, or to call him to account, or to assert any title to possession or custody of the moneys misapplied by that officer, or would have any power of disposition over those moneys if they should be recovered or restored, so that no decree for the payment of the moneys to any such local authority would avail, even if such a decree were not totally unwarranted by law; where the real parties injured are the persons who will be taxpayers within the County of New York for thirty successive years of the future, and especially the last of those years, when the principal of the debt will be payable, — an uncertain, fluctuating, and indefinable class of persons, wholly incapable of becoming parties to this action or to any action, or of being represented under any authority known to the law, except according to and by virtue of that principle of general jurisprudence which represents such parties by the sovereign, by the People in this State, as by the Crown in England.

Any moneys which may be recovered are part of the avails of a charge imposed on these future taxpayers, and have been raised for a specific statutory purpose which is exhausted.

They cannot be applied to buy in portions of that charge, or given to a new appropriation, which may be supposed to be approximate justice toward the injured parties, without new legislation. The intervention of the State to authorize a just disposal of the moneys by a local body, if such a body could gain possession of them, would be as necessary as to make that disposition for itself when it shall have recovered the moneys as the representative of the injured parties in its capacity of *parens patriæ*.

If, on the other hand, there were no defect in existing legislation to enable this Court to direct the custody, administration, and application of these moneys in such manner as to work out substantial justice to the injured parties, the Court would do so by its decree and according to all the English authorities which have been cited to your Honors, this action would be well and properly brought for that purpose.

In such a case as the present it is not necessary to invoke the more general and extensive doctrines applicable to the subject which I have discussed; and calling your Honors' attention to this discrimination, and to the special and independent grounds of jurisdiction which are peculiar to this case, I leave the matter in your hands.

XXX.

In the fall of 1872 the "New York Times," apparently under the impression that Mr. Tilden for his services in breaking up the Tweed Ring and bringing its members to justice was acquiring more credit than he would make a good use of, began a series of attacks upon him of so wanton and gross a character that Mr. Tilden felt obliged to take public notice of them. In January, 1873, he published a pamphlet entitled "The New York City Ring: its Origin, Maturity, and Fall," in which he replied fully and conclusively to his assailant. The public has so generously recognized the supreme value of Mr. Tilden's services in that famous struggle that so far as this pamphlet is a defence from the charges of the "Times," it has no longer any importance; but for the light which it throws upon the history of the methods by which the frauds of the Ring were discovered and exposed, and the rogues severally brought to justice, its value can hardly be over-estimated.

It may not be amiss here to state that none of the gentlemen associated in the present management of the New York "Times" are supposed to be responsible for its course in provoking this retort from Mr. Tilden in 1873, or were the objects of his animadversions.

THE NEW YORK CITY RING: ITS ORIGIN, MATURITY, AND FALL.

If one were to attempt to correct every ordinary error concerning himself which appears in print, the occasions of controversy would be inconveniently frequent for the avocations of a busy life. It is therefore only in a very exceptional case that I should depart from my habit of leaving such errors to answer themselves, or to be refuted by my acts or by the general tenor of my life. But articles in the "Times" for several weeks past so falsify the history of the events they discuss, by perverting some facts and suppressing others, that it is a right, and perhaps a duty, to vindicate the truth.

I begin by saying that I am in no manner or degree responsible for this controversy. I have been concerned in no attempt to appropriate to myself, or to any set of men, or to any party, the merit of having overthrown the Ring.

As credit with the public was no part of my motives, but only a sense of duty, founded on the idea that every personal power is a trust, I have felt no sacrifice in awarding the most liberal honors of the victory to others.

The committee of the Bar Association will remember that, when they came to Albany with their memorial, the winning policy I indicated was to do the work, bear the burdens, and bestow on others the honors. That policy, and the persistent forcing of the issue, in the glare of a vehement public opinion, stimulated by the nearly united metropolitan Press, did much to carry impeachment, by four votes to one, over corruptions and combinations in a body which the "Times" has charac-

terized as venal, and in which nearly every reform failed. Even after the work was completed, and the Bar Association met to distribute honors, I stood among its members, not to take any share to myself, but to join in a well-merited tribute of thanks to Messrs. Van Cott, Parsons, and Stickney. I believe those gentlemen would avow that there was no time before the final vote in the Assembly when, without my individual co-operation, they would have hoped for success, which needed to be organized anew after every reverse.

Nor is it true that I was at all disposed to withhold credit from the "Times" for its services in the conflict. Its statement that Mr. Hewitt's "civil word" was the first it had received from any Democrat, is disproved by my printed speeches; and when the project — afterward abandoned for the best motives — was entertained of offering it a public testimonial, I was applied to by its friends to join, and assented.

Inspiration of attacks on me.

What is the inspiration of its attacks upon me during the last month, I was too much out of contact with all sources of information in current politics to be able to ascertain. Could it be that its watchful rivals had discovered a morbid spot on which they delighted to put their fingers — had found they had only to mention with commendation a co-worker of the fight in order to provoke a column of detraction? I waited. At last came an article ascribing to me a plan to control Mayor Havemeyer; characterizing me as "one of the most active intriguers of the day," as attempting, "by underhand devices, to cheat the Republicans out of the fruit of their victory;" and ascribing to me "laborious stratagems," "wonderful mines and countermines." It asserted of me, "He has now hatched another magnificent device, and very likely supposes that the Mayor will lend himself to it;" it then added, "The Legislature will do nothing of the kind;" and it concluded, — "If a party victory is to be claimed, we claim it in behalf of the Republican party."

Next comes a proposed charter, containing most of the worst

features of the present, denying Mayor Havemeyer all substantial power over the workings of the city government, of which he is the nominal head; putting him under guardians in the exercise of the scanty authority doled out to him; and vesting most of the governmental power and the real influence in executive offices with long terms, practically appointed by bill at Albany.

Then appears another column full of similar allegations respecting me, and of what purport to be statements of facts. Among them is this: "He is said to have great influence over Mayor Havemeyer, and to be working hard to drag the Mayor into his great 'reconstruction' schemes. Do we owe it to his influence that the Mayor voted for Charles Shaw as counsel to the Board of Health?" Mayor Havemeyer.

Now in the whole of this mass of statement, so far as it relates to me, there is not a single atom of truth. I have not seen Mr. Havemeyer since December, nor at any time since his election, except when I met him on the street, or he called on me to ask my opinion on some question. I have not recommended or suggested to him any human being for an office, or for any benefit within his gift. I do not mean to intimate that there would have been anything improper in doing so, but simply to state the fact as it is. I have not sought to influence Mr. Havemeyer in anything whatsoever. If my opinion would have any weight with him, or on any occasion would be asked by him, it is because in almost thirty years of mutual knowledge he has looked into my mind and heart, and in no instance has seen anything which was not frank, true, disinterested, and patriotic. He knows that if I had the power, which I do not pretend to have, I would not deflect him one hair's breadth from the line of fidelity to his peculiar trust, as a non-partisan representative of municipal reform, for the advantage of any party clique or man. If he had occasion to seek my aid or counsel, he would begin by apologizing for troubling me, — so well does he know that my thoughts and tastes turn to other objects when inclination is

not overcome by a sense of duty. As to Mr. Charles P. Shaw, I do not believe I should know that gentleman if I were to meet him; and I never heard his name mentioned in connection with any appointment until I read of his being voted for as counsel to the Board of Health by Mr. Havemeyer.

The "Times" not only assumes to state with absolute positiveness my plans and thoughts, but also my arguments to Republicans and my whispers to my friends. There is not one word of truth in all these statements. I have not had any plans of reconstructing the Democratic party of the city by any aid of patronage from Mayor Havemeyer. I do desire that the organization of the Democratic party and of all parties should be in the hands of a better class of men than of late years have controlled them. In my speeches during the last two years I have constantly urged the idea that without more attention by our best men to their respective party organizations, good government, especially in a great city like this, is impossible. All my friends know how great is my repugnance to an active personal connection with city politics, even in a temporary and exceptional period. After sixteen months of engrossing occupation in the various controversies which grew out of the municipal frauds and the reform in the judiciary, I consider the work I undertook, so far as within my power, to be substantially accomplished. Except in such matters as concerned that work, from the day of the election I have been totally withdrawn from political action or thought. In that I am still ready to co-operate, as well as in any new legislation necessary for the city. But my attention has been occupied in repairing the long neglect of my private affairs, and in getting ready to execute a purpose which, for some years, has been perfectly settled, and which no vicissitude in State or National politics could have changed. This is a period of relaxation in which to renovate my health by repose and travel. The purpose and the motive for which I have deferred it for two years were stated in the following passage from my speech at the Cooper Institute,

on the second of November 1871, as it is reported in the "Evening Post":—

"For myself, I would gladly have escaped the burden that has fallen upon me. I should have preferred to pass next year and this winter abroad, to have some repose after twenty years of incessant labor in my profession. It was because I could not reconcile myself to consent that this condition of things should exist without redress that I deemed it my duty, before I should finally withdraw from public affairs, to make a campaign, to follow where any would dare to lead, to lead where any would dare to follow, in behalf of the ancient and glorious principles of American free government.

"And, by the blessing of God, according to the strength that is given to me, if you will not grow weary and faint, and falter on the way, I will stand by your side until not only civil government shall be reformed in the city of New York, but until the State of New York shall once more have a pure and irreproachable judiciary, and until the example of this great State shall be set up to be followed by all the other States."

Occasion of this exposition.

I have deemed this exposition due to Mr. Havemeyer, to the Committee of Seventy, and to the other honorable citizens who are striving for good legislation at Albany. It is called for by the elaborate and studied attempt to alarm the party passions of the Republicans by ascribing to me acts and purposes which I have never entertained, and to excuse to the consciences of men who have some hesitating sense of duty, the continuance and renewal of the system of disposing of the great trusts of this city by secret arrangements carried out by artfully worded legislation at Albany, which is generally obtained by dividing up offices as bribes; of denying the people of this city any voice in their own government, by rendering elections nugatory; and even refusing to the non-partisan reform Mayor Havemeyer any power over the government he is set to reform. And I now declare that in all the long diatribes of the "Times," so far as they relate to me, my plans, designs, purposes, or acts, in respect to Mayor Havemeyer, there is not one word of truth.

Having resolved to depict me as the Mephistopheles whose influence over Mayor Havemeyer was to alarm the Republicans into forcibly depriving him of the legitimate powers of his office, the "Times" states a variety of pretended facts illustrative of its theory. In its latest article it says: "Mr. Tilden, having very carefully held aloof from the contest, and systematically thrown cold water upon it until he saw it was practically over, . . . went about declaring that the 'Times' would be beaten, that Mr. Tweed 'carried too many guns for us.'"

The truth is, I never "declared," and never said any such thing, or anything similar, to any human being. Nor did I "systematically" or at any time "throw cold water" on the contest. How early I took part in it will be discussed hereafter. It is not true that I had any connection with the Cincinnati nominations. The statement that no one has been able "to extract" from me "a dime toward" the Greeley statue, is equally unfounded. I was never asked but once, and made a subscription on the spot, without a word of objection.

I mention these cases as specimens of the loose statements, affirmed as positive facts, with which these articles abound. I submit to the gentlemen who manage the "Times" that they go beyond the license of legitimate controversy.

Having now disposed of these preliminary matters, I proceed to reply to the substantial allegations contained in the numerous articles of the "Times." They are embodied in the following specimen extracts: —

"The public will never forget that, in the greatest battle ever fought with organized corruption in this country, the old Democratic leaders of New York had not the courage or honesty to strike a blow."

"In all that bitter contest, when at times it seemed as if this journal would be overwhelmed by its enemies, or at least severely injured by their machinations, we never had a word of open encouragement or an act of assistance from the ancient chiefs of the Democracy."

"They denounced when it was no longer dangerous to denounce;

their indignation concerning the Ring was most edifying after the Ring was down."

"Mr. Tilden came with his advice when it was very easy to give it, and the other leaders hastened to run from the sinking ship."

"Mr. Tilden was shrewd enough to see that unless a section of the Democratic party cut loose from Tammany, the whole party must inevitably go under with Tammany. He cut loose in the very nick of time to save his own reputation."

"Just at present it is a comparatively comfortable thing for . . . Mr. Tilden . . . to throw mud on the grave of the Tammany Ring."

"Mr. Tilden's *coup d'état* was not peculiarly Mr. Tilden's, and was anything but a wonderful *coup*."

"We cannot, however, agree with Mr. Hewitt that to Mr. Tilden is due the credit of proving charges vaguely made."

"But there was a time, we beg leave to remind these outspoken denouncers of the Ring, when to attack Tweed or Connolly meant to attack an enormous and powerful interest, a gigantic corruption, backed by all the power of the Democratic party. . . . Office and endowment and honor were on the side of the successful scoundrels; every possible promise of money and place was held out to those who would support them; and those who opposed them had to bear a cutting storm of reproach and obloquy."

"In those days respectable gentlemen leading the Democratic party, like Mr. Hewitt and Mr. Tilden, though despising from the bottom of their hearts the thieves in high places, and believing them thorough swindlers, yet never ventured to utter a word against them in public. In fact, to the distant public their respectability covered the Ring's rascality. Mr. Tilden, Mr. O'Conor, and others like them appeared the pillars of Tammany Hall."

"Our daily incessant attacks upon Tammany began in the summer of 1870. It was not until a year later that Mr. Tilden or any leading Democrat could be induced to lift a finger or utter a word against Tweed and his confederates."

"Mr. Tilden was throughout this period as quiet as a mouse; or, if he did appear anywhere in public, it was generally in a position which led people to suppose that he was on the side of the Tweed gang. He presided over their Convention at Rochester in September, 1870."

"We never questioned the fact that Mr. Tilden all this time in his heart detested the Tammany gang; but he took care never to say so."

"He came over to our side, and then did his best to keep up appearances for the Democratic party."

"Mr. Tilden generally manages to save himself by these somersaults at the eleventh hour."

"When a crafty man is plotting to do you some injury, he generally becomes your accuser, and charges you with devising the very mischief he is preparing to launch at your head. Thus Mr. Tilden and his friends are already complaining of the rapacity of the Republicans."

Origin of the Ring.

The Ring had its origin in the Board of Supervisors. That body was created by an Act passed in 1857 in connection with the charter of that year. The Act provided that but six persons should be voted for by each elector, and twelve should be chosen. In other words, the nominees of the Republican and Democratic party caucuses should be elected. At the next session the term was extended to six years. So we had a body composed of six Republicans and six Democrats, to change a majority of which you must control the primaries of both of the great National and State parties for four years in succession. Not an easy job, certainly! The individual man has little enough of influence when you allow him some chance of determining between two parties, some possibility of converting the minority into a majority. This scheme took away that little. It also invited the managers of the primaries to act as badly as possible by removing all restraints.

It is but just to say that the Democracy are not responsible for this sort of statesmanship, which considers the equal division of official emoluments more important than the administration of official trusts or the well-being of the governed. In the Assembly of 1857, of one hundred and twenty-eight members, the Democracy had but thirty-seven; of thirty-two senators it had but four; and had not the Governor. In the thirteen years, from 1857 to 1869, it never had a majority in the Senate; in the Assembly but once; and had the Governor but once up to 1869. The Republicans had the legislative power of the State in all that period, as they and their Whig predecessors had possessed it for the previous ten years.

The Ring was doubly a Ring; it was a Ring between the six Republican and the six Democratic supervisors. It soon grew to a Ring between the Republican majority in Albany and the half-and-half supervisors, and a few Democratic officials of this city.

The very definition of a Ring is that it encircles enough influential men in the organization of each party to control the action of both party machines, — men who in public push to extremes the abstract ideas of their respective parties, while they secretly join their hands in schemes for personal power and profit.

The Republican partners had the superior power. They could create such institutions as the Board of Supervisors, and could abolish them at will. They could extinguish offices and substitute others; change the laws which fix their duration, functions, and responsibilities; and nearly always could invoke the executive power of removal. The Democratic members, who in some city offices represented the "firm" to the supposed prejudices of a local Democratic majority, were under the necessity of submitting to whatever terms the Albany legislators imposed; and at length found out by experience, what they had not intellect to foresee, — that all real power was in Albany. They began to go there in person to share it. The lucrative city offices — subordinate appointments, which each head of department could create at pleasure, with salaries in his discretion, distributed among the friends of the legislators; contracts; money contributed by city officials, assessed on their subordinates, raised by jobs under the departments, and sometimes taken from the city treasury — were the pabulum of corrupt influence which shaped and controlled all legislation. Every year the system grew worse as a governmental institution, and became more powerful and more corrupt. The executive departments gradually swallowed up all local powers, and themselves were mere deputies of legislators at Albany, on whom alone they were dependent. The Mayor and Common Council ceased to have much legal

authority, and lost all practical influence. There was nobody to represent the people of the city; there was no discussion, there was no publicity. Cunning and deceptive provisions of law concocted in the secrecy of the departments, commissions, and bureaus, agreed upon in the lobbies at Albany between the city officials and the legislators or their go-betweens, appeared on the statute book after every session. In this manner all institutions of government, all taxation, all appropriations of money for our million of people were formed. For many years there was no time when a vote at a city election would in any practical degree or manner affect the city government.

Period of Ring power.

The Ring became completely organized and matured on the 1st of January, 1869, when Mr. A. Oakey Hall became mayor. Mr. Connolly had been comptroller two years earlier. Its power had already become great, but was as nothing compared with what it acquired on the 5th of April, 1870, by an Act which was a mere legislative grant of the offices, giving the powers of local government to individuals of the Ring for long periods, and freed from all accountability, as if their names had been mentioned as grantees in the Bill. Its duration was through 1869, 1870, and 1871, until its overthrow at the election of November, when it lost most of the senators and assemblymen from this city, and was shaken in its hold on the legislative power of the State.

It will be noticed that the first date in the list of county warrants bearing indications of fraud published by the "Times" in the last of July, 1871, is January 11, 1869. Of the $11,250,000 embraced in these accounts, $3,800,000 were in 1869; $880,000 in 1870 before April 5; $6,250,000 in 1870, after that date; and $323,000 in 1871. The thorough investigation made by Mr. Taintor at my instance shows the aggregate vastly larger, but does not much alter the proportions except in 1871. The periods of power and plunder are coincident in time and magnitude.

Even before the Ring came into organized existence, the antagonism between those who afterward became its most leading members and myself was sharply defined and public. It originated in no motive of a personal nature on my part, but in the incompatibility of their and my ideas of public duty. I distrusted them. They knew that they could not deceive or seduce me into any deviation from my principles of action. As early as 1863 some of them became deeply embittered because, being summoned by Governor Seymour to a consultation about the Broadway Railroad Bill, I advised him to veto it.

Formative period.

Some years afterward I accepted the lead of the Democratic State organization. I did so with extreme reluctance, and only after having in vain tried to place it in hands in which I could have confidence. I had seen the fearful decay of civic morals incident to the fluctuating values of paper money and civil war. I had heard and believed that the influence of the Republican Party organization had been habitually sold in the lobbies — sometimes in the guise of counsel fees, and sometimes without any affectation of decency. I had left the Assembly and Constitutional Convention in 1846, when corruption, in the legislative bodies of this State, was totally unknown, and now was convinced that it had become almost universal. I desired to save from degradation the great party whose principles and traditions were mine by inheritance and conviction, and to make it an instrument of a reaction in the community which alone could save free government. Holding wearily the end of a rope, because I feared where it might go if I dropped it, I kept the State organization in absolute independence. I never took a favor of any sort from these men, or from any man I distrusted. I had not much power in the Legislature on questions which interested private cupidity; but in a State Convention, where the best men in society and business would go, because it was but for a short term, those with whom I acted generally had the majority.

1869. I had no more knowledge or grounds of suspicion of the frauds of 1869, as they were discovered three years afterward, than the "Times" or the general public. But I had no faith in the men who became known as the Ring, and they feared me. I had no personal animosity; but I never conciliated them, and I never turned from what I thought right, to avoid a collision.

The first impulse of their growing ambition and increased power was to get rid of me and possess themselves of the Democratic State organization. Their intrigue for this purpose was conceived and agreed upon in the winter at Albany. I knew it, but I did nothing till August. Then I accepted the issue; and they were defeated by seven eighths of the Convention. The country papers of the Republican party were full of the subject. The files of the "Times" show that the contest attracted public attention. That these men and I were not in accord, was known wherever in the United States there was the least information on such subjects.

This year was marked by the saturnalia of injunctions and receiverships. In April and May, in speeches in the Circuit Court of the United States, I denounced the orders granted by Barnard to Fisk against the Pacific Railroad Company as perversions of the instruments of justice, bearing on their face bad faith. I had reason to believe that Tweed was a partner in this freebooting speculation; and his son was Barnard's receiver. The contest excited universal attention. My motive in taking the case — with great inconvenience to more important business — was the abhorrence I felt of the prostitution of judicial power which touched the rights and interests and honor of every man in the community, and because on being applied to by the Company in its extremity, I had advised that the orders in Barnard's court, for the seven months previous, were nullities. The acceptance of that advice seemed to impose on me the obligation to maintain it, as was done successfully.

I declined retainers from Fisk in matters involving no scan-

dal, but in which he had not my sympathy, after he had informed me that he had paid a counsel, during the year, many times the largest fee I had ever received; adding, "We don't want anybody else — we want you." My open denunciations of the judicial abuses so frequent at this time, and the general support I had received from the country delegates, I have always believed to be the origin of the reaction by which, instead of a third subject for impeachment, Judge Brady was nominated.

In December I signed the call for the meeting at which the Bar Association was formed. At that meeting, on the 1st of February, 1870, upon being called on, I gave utterance to my unpremeditated thoughts, in words which stand, without any change, as they were reported in the official proceedings of that body. They were generally deemed to breathe a tone of defiant independence. Among those thoughts were these: —

"If the Bar is to become merely a mode of making money, making it in the most convenient way possible, but making it at all hazards, then the Bar is degraded. If the Bar is to be merely an institution that seeks to win causes, and win them by back-door access to the Judiciary, then it is not only degraded, but it is corrupt.

"Sir, I am as peaceable a man as my friend Nicoll; yet I admit that his words of peace sounded a little too strong in my ears. The Bar, if it is to continue to exist, if it would restore itself to the dignity and honor which it once possessed, must be bold in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed Judiciary, it can have the administration of justice made pure and honorable, and can restore both the Judiciary and the Bar, until it shall be once more, as it formerly was, an honorable and elevated calling."

I may mention, in passing, that at this time judicial reform, of which the "Times" was last year so useful a champion, had not then interested it enough to bring into its columns a full report of that important meeting.

Contest of 1870.

In 1870, for the first time in four and twenty years, the Democrats had the law-making power. They had in the Senate just one vote, and in the Assembly seven votes, more than were necessary to pass a Bill, — if so rare a thing should happen as that every member was present and all should agree. This result brought more dismay than joy to the Ring. They had intrenched themselves in the legislative bodies against the people of this city. But the Democratic party was bound by countless pledges to restore local government to the voting power of the people of the city. The Ring could trade in the lobbies at Albany, or with the half-and-half Supervisors in the mysterious chambers of that Board. They might even risk a popular vote on mayor, if secure in the departments which had all the patronage and which could usually elect their own candidate. But they had no stomach for a free fight over the whole government, at a separate election.

Their motives were obvious, on a general view of human nature. None but the Ring then knew that in the secret recesses of the Supervisors, and other similar bureaus, were hidden ten millions of bills largely fraudulent, and that, in the perspective, were eighteen other millions, nearly all fraudulent.

The sham.

A sham was necessary to the Ring. Moral support was necessary to sustain their imposture. None of the Ring ever came near me; but Mr. Nathaniel Sands often called to talk over city reform. He sometimes brought my honored and esteemed friend Mr. Peter Cooper. They were convinced that the Ring had become conservative, that they were not ambitious of more wealth, and that they were on the side of the taxpayers. There was thought to be great peril as to who might come in, in case the Ring should be turned out.

I told Mr. Sands I would shelter no sham. I would co-operate with anybody for a good charter. The light and air of heaven must be let in on the dark places of the city administration. The men to come into office must enter after

a vote of the people. I did not believe the Ring would agree to that; I would agree to nothing else. The Ring did not want any conference with me. They tried their own plan. It failed ignominiously. After it was defeated none were so poor as to do it reverence. It never had the slightest chance of revival without a general support of the Republicans. Not only were three Democratic city senators against it, but enough Democratic senators from the country would vote against it if their votes could be made effective.

Opposition.

During the lull I had conferences with Mr. Jackson S. Schultz, then president of the Union League Club; Mr. Nordhoff, of the "New York Evening Post;" Mr. Greeley, of the "Tribune;" Mr. Marble, of the "World;" and many others. I entered into no alliance with the "Young Democracy" for future political power, and for weeks was ignorant even of their meetings. I did accept from Mr. Marble two invitations to attend consultations on a draft of a charter; and certain fundamental ideas on which he and I insisted, were conceded. These were a separate municipal election in each spring, a new election before the executive offices should be filled, the subjection of all officers to a practical responsibility, and terms of office which should preserve to each successive mayor his supervisory powers over the government of which he is the head. These ideas were concurred in by the Union League Club and by the other gentlemen I have mentioned.

The conflict.

Suddenly a charter was sprung by Mr. Tweed, and rushed forward very fast. I was convinced it would pass. A clerk in one of the public offices came privately to tell me "the stuff had been sent up." There was a movement to resist it. Mr. Schultz, Mr. Bailey, and others were in motion. The Union League Club appointed a committee of fifteen to go to Albany to remonstrate. My co-operation was asked. I had little hope. I expected a large

Republican support of Mr. Tweed's scheme. But I thought it right to do the utmost for those who were willing to make an effort. I felt more scorn than I ever remember to have felt for the pusillanimity which characterized the hour. I had no objection to hang up my solitary protest against the crime about to be committed. I made a speech before Mr. Tweed and his committee of the Senate. An unrevised report was published at the time; it contains the following passages:—

"By the first appointment of these various officers, self-government in the people of the city of New York is in abeyance for from four to eight years. Sir, by that Bill the appointment of all these officers is to be made by a gentleman now in office. It is precisely as if in the Bill it had read, not that the mayor shall make these appointments, but the individual who to-day fills that office. . . . The Act proceeds in the same way in which the Acts creating commissions have done. A gentleman is designated who makes these appointments. To all practical intents and purposes they are commissions, just as under the old system. . . . Under the Republican system of commissioners, the Street Department and the Croton Board have been reserved to the control of the city authorities. They stand, as under the old system anterior to the time when these commissions began to be formed. . . . The mayor has no power over these functionaries, except to impeach them; and all experience has shown that that is a dilatory and insufficient resource, not to be relied on in the ordinary administration of the government. . . . On the 31st December, by the provisions of this Bill, the term of [the mayor's] office will expire. Then, sir, what will be the situation of his successor? For two years he will have no power whatever over the administration of the government of which he is the nominal head. All these functionaries survive him; their terms go beyond his term, and he has not the power to remove them, not the power to enforce any practical responsibility as against them; he is a mere cipher. Then, sir, at the end of two years another election takes place, another mayor is elected. Still these officers extend their terms clear beyond his, the shortest of them being for four years, and the longest of them for eight years, — many of them for five. . . . This charter is defective in another respect, in that it makes the election of charter officers coincident with that of the State and Federal officers. The municipal election of a million of people is of sufficient importance to be dealt with by itself; and by so doing

you avoid mixing of municipal interests with State and National interests. . . . What I object to in this Bill is, that you have a mayor without any executive power; you have a legislature without legislative power; you have elections without any power in the people to affect the government for the period during which these officers are appointed. It is not a popular government, it is not a responsible government; it is a government beyond the control and independent of the will of the people. That the mayor should have real and substantial power, is the theory we have been discussing for the last four or five years; it is the theory upon which we have carried on our controversies against our adversaries, and are now here. . . . After a period of twenty years, for the first time the party to which I belong possesses all the powers of the government. I have a strong and anxious desire that it should make for the city of New York a government popular in its form. Mr. Chairman, I am not afraid of the stormy sea of popular liberty. I still trust the people. We no doubt have fallen upon evil times; we no doubt have had many occasions for distrust and alarm. But I still believe that in the activity generated by the effectual participation of the people in the administration of the government you would have more purity and more safety than under the system to which we have been accustomed. It is in the stagnation of bureaus and commissions that evils and abuses are generated. The storms that disturb the atmosphere clear and purify it. It will be so in politics and municipal administrations if we will only trust the people."

The Bill passed. An intenser animosity than was excited against me in the men who thus grasped an irresponsible despotism over this city, cannot be imagined. Mr. Tweed threatened to Lieutenant-Governor Beach that he would have me deposed from the State Committee; and met the answer, "You had better try it."

Let us pause a moment to consider the real character of that law, fraudulently called a city charter. Mr. Tweed's case will illustrate its operation. He had never been able to become street commissioner. Charles G. Cornell was appointed to that office by a Republican mayor, and Mr. Tweed made deputy. When the office became vacant, Mayor Hoffman could not be induced to appoint Mr. Tweed. George W. McLean was appointed, and Mr. Tweed remained

Real nature of the law.

deputy. He had now been turned out as deputy, and could not get back; on the loss of his office all his political power turned to dust and ashes.

The Tweed Charter vacated the office of street commissioner and of the functionaries of the Croton Department, within five days, vesting all their powers in a commissioner of Public Works, and required Mr. A. Oakey Hall to appoint that commissioner. It was known to everybody that Mr. Tweed was to be appointed. The Act passed on the 5th, and on the 9th Mr. Tweed was appointed. His term was four years. The power of the governor to remove him on charges was repealed, and all powers of removal by the city government were abrogated. Impeachment was restricted by the condition that the mayor alone could prefer charges, and trial could only be had if every one of the six judges of the Common Pleas was present.

In ancient times, offices were conferred by grant from the sovereign; this was conferred by grant from the State. Let us suppose the Act had run in these words: —

"We, the people of the State of New York, represented in Senate and Assembly, do by our supreme legislative authority hereby grant to William M. Tweed the office of Commissioner of Public Works, and annex thereto, in addition to the powers heretofore held by the street commissioner, all the powers heretofore held by the various officers of the Croton Department, to have and to hold the same for four years, with the privilege of extending the term by surrendering any remnant thereof and receiving a re-appointment for a further new term of four years, which office shall be free and discharged of the power of the Governor to remove for cause on charges, as in the case of sheriffs, and of all power of removal by the city government, and absolutely of all accountability whatsoever, unless Mayor Hall, or some successor, shall choose to prefer articles of impeachment to the Court of Common Pleas, and unless all the six judges shall attend to try such articles."

I aver that such was exactly the operation of that Act; the legal effect and the practical working of the Act were the same as if it had been expressed in these words.

In like manner, the offices of three of the five heads of the Parks were granted for five years to Peter B. Sweeney, Thomas C. Fields, and Henry Hilton, giving them the control of the Central Park and every park in the city, and of the Boulevards; suppressing Mr. Green, and removing Messrs. Stebbins, Russell, and Blatchford. The office of chamberlain was granted to Mr. John J. Bradley. The Department of Police was granted for from five to eight years to Messrs. Henry Smith, B. F. Maniere, Bosworth, and Brennan. The departments of Health, Fire, Excise, Charities, Docks, and Buildings were granted to others. By an amendment passed twenty days later, Mr. Connolly and Mr. O'Gorman were brought into the same category. Such a concentration of powers over this city was never before held by any set of men or any party as was thus vested in the Ring.

The Ring enthroned over the city.

The true character of this fraudulent measure was at once fully exposed. The issue was made by Messrs. Schultz, Bailey, Varnum, Greeley, and others, and by the Union League Club. All the objectionable features of the Act were pointed out in their resolutions, and remonstrated against. They were discussed, condemned, and denounced in my speech published at the time. They were ably exposed by the "World," the "Evening Post," the "Sun," and the "Tribune."

It would seem incredible that such a violation of the rights of the people and of all just ideas of government, even if these extraordinary grants had been to the best men in the community, could be passed. No such thing would have been even excusable, unless for a short time as a temporary dictatorship in a public extremity. It was adopted as a permanent measure, and the grant was to men who were the objects of suspicion, who in little more than a year afterward were hunted from human society as well as from office; some of whom were, or are, in exile, and others of whom are now arraigned by the State in civil and criminal actions.

The means.

The air was full of rumors of corruption. The great public

trusts, involving the interests, safety, and honor of a million of people, had been divided up as bribes. It was everywhere said that the crime had taken a grosser form, and that senators and assemblymen had been bought with money to vote for this iniquity. A year later it was stated in the newspapers, on the authority of Judge Noah Davis, as derived from a well-known member of the lobby, that the price paid to six leading Republican senators was to each ten thousand dollars for the charter, and five thousand for the kindred bills of the session, and five thousand for similar services the next year.

Shortly after this revelation, while the revolt of forty thousand Democrats in this city was taking its representation away from the Ring, the Republicans of the interior were re-electing five of these six senators as their contribution, with many other similar characters, to the "reform" Legislature. Those five senators now sit in the highest seats of the Grant Republican Sanhedrim at Albany. The "Times" has for a long while been as "still as a mouse" about them.

Who betrayed the city?

There have been two great attacks upon the Ring. The first was in Albany in April, 1870; that was to prevent the Ring, while only objects of suspicion, from being enthroned in absolute dominion over the people of this city. The failure of that attack made no change possible until the Senate could be changed. The election for Senators did not come until November, 1871. Then the second attack was made, — rendered necessary by the failure of the first.

Who was responsible for that disastrous day, when the beginning of the crimes afterward discovered was shrouded in darkness, and their larger development made possible? Was it Mr. Tilden? Mr. O'Conor? Mr. Hewitt? Did their "respectability cover the Ring's rascality," as the "Times" charges? The "Times" itself shall answer.

On the 6th of April, 1870, the day after the passage of the Act granting New York city to the Ring, the "Times," in an article headed "Municipal Reform," hailed this measure as a

reform; derided the Union League Club and Mr. Greeley with their "entire lack of influence," in that "so pronounced an expression" against the charter had not "been heeded by at least one Republican senator;" and said that —

"If it shall be put in operation by Mayor Hall with that regard to the general welfare which we have reason to anticipate, we feel sure our citizens will have reason to count yesterday's work in the Legislature as most important and salutary."

On the 8th it declared, —

"Senator Tweed is in a fair way to distinguish himself as a reformer;" that "he had put the people of Manhattan Island under great obligations," etc. . . . "We trust that Senator Tweed will manifest the same energy in the advocacy of this last reform which marked his action in regard to the charter."

On the 11th it published Mayor Hall's instrument, dated the 9th, making the appointments to all the municipal offices. Among them were the following: —

Department of Public Works . .		William M. Tweed.
"	Parks	Peter B. Sweeney, Thomas C. Fields, Henry Hilton.
"	Police	Henry Smith, B. F. Maniere, Joseph Bosworth, — Brennan.
Chamberlain		John J. Bradley.

On the 12th it jeered the Union League Club, Mr. Greeley, and Mr. Tilden. It commented on a remark in Mayor Hall's paper making the appointments, in which he said he would have been politically justified in conferring them all on Democrats; and replied "that the Republicans were rather useful to the authors of the new charter in the recent contest;" that "but for the Republicans, the Young Democracy might to-day be at the top of the tree;" that "Mayor Hall and his associates will doubtless show a proper appreciation of the

assistance rendered them by the Republicans when the enemy were crying war to the knife, and the knife to the hilt."

On the 13th it said: "As a whole, the appointment of the heads of the various departments of the city government which have been announced by the Mayor are far above the average in point of personal fitness, and should be satisfactory. We feel inclined to be thankful, if not entirely satisfied with the result." It also asserted that the charter and election law "could not have been secured without the help of the Republicans in the Legislature; and hence the credit is as much theirs as it is of the Tweed Democracy."

The Ring, having possession of the Tammany Society, — in which Mr. Tilden had not set his foot during their ascendency, — at the election of April 18 put up a sham ticket, on which they placed the names of persons whom they hated, and gave it a few of their own votes, to exhibit the appearance of a contest.

On the 19th the "Times," under a flaming notice headed "Now is the triumph of Tweed complete," exulted over the prostrate Tilden, A. H. Green, and others, "heroes of the O'Brien faction."

On the 21st of May it had a commendatory notice of Mr. Peter B. Sweeney presiding over a meeting of the Commissioners of Public Parks; and added, "that he will be faithful to his word, the meeting yesterday afforded a fresh guaranty."

Immediate consequences.

The 5th of May was a day destined to be famous in our municipal annals. Some mysterious and insensible influence seemed to debilitate the tone of the "Times" in its utterance that morning. It spoke feebly of "reforms made possible by the recent legislation at Albany." Was the atmosphere dark and murky with what was going on in the new court-house at the same moment? There the single meeting of the Board of Special Audit was being held. Hall and Tweed and Connolly were making the order for the payment of the $6,312,500, of which scarcely 10 per cent in value was realized by the city. Tweed got 24 per cent, and his

agent, Woodward, 7; the brother of Sweeney, 10; Watson, 7; 20 went to parties not yet named in the forms of legal proof; 33 went to the mechanics who furnished the bills: but their share had to suffer many abatements. Garvey had advanced, March 30, $10,000, to go to Albany; and again, April 17, $40,000, making $50,000. Ingersoll also had to send $50,000; Keyser, $25,000; Miller, $25,000; Hall, $25,000; and others their quotas; and then they had out of their third to do work on city houses and country houses, to make furniture, to paint, to supply safes, and to perform miscellaneous services.

As the time advanced, the percentages of theft mixed in the bills grew. Moderate in 1869, they reach 66 per cent in 1870, and later 85 per cent. The aggregate of fraudulent bills after April 5, 1870, was, in the rest of that year, about $12,250,000, and in 1871, $3,400,000. Nearly fifteen and three quarter millions of fraudulent bills were the booty grasped on the 5th of April, 1870. Fourteen, perhaps fifteen, millions of it was sheer plunder.

The victory of the 5th of April enabled the Ring to cover up what had been already stolen, and to go forward on a far larger scale, and commit these enormous robberies.

The "Times" is in error in saying that its "daily incessant attacks on Tammany began in the summer of 1870." There is not an aggressive word in its editorials in all that summer. Until the 20th of September it kept as "still as a mouse," as it says Mr. Tilden did. Then it first touched the subject incidentally to an article on the Democratic State Convention held the next day. The stillness of Mr. Tilden left ringing in the ears of the people his unavailing protest and his denunciation. The stillness of the "Times" left echoing in the public ear its boast that "the credit" of the Ring supremacy belonged "as much to the Republicans as to the Tweed Democracy." Three days later, it began a series of elaborate attacks, not really upon the Ring, but upon their foe, Mr. Tilden. It accused him of "going to

The summer of 1870.

Rochester to preside over Tweed's Convention;" and it has repeated the statement many times lately. The truth is, he did not preside, and it was not Tweed's Convention.

It was my official duty to move the appointment of the temporary chairman, and it was customary to precede the motion by an address upon National or State politics. That I did. The Convention was a body of honorable and respected gentlemen, with the exception of a few members of the Ring, who got in as delegates by means of the power and prestige the "Times" had helped them to acquire, and in whom it had expressed its confidence after their then recent public assumption of the municipal offices. I had not even the benefit of its first beginning of retraction. That happened after I had gone to the Convention, and was not communicated to me by telegraph. To have stayed away would have been to abandon my watch and guard. True men, in the intervals of battle, rest on their arms; they do not run away.

But the "Times" complains that I did not denounce the Ring in my speech. Neither they nor their doings were at issue. There was no new suspicion of them after they had been accepted as rulers of the metropolis by the nearly unanimous vote of both Houses of the Legislature, aided by the "Times." The general public had acquiesced in the disposition to try them again. The whole Press assented. Nearly everybody began to make relations with them. I did not; I stood aloof. The Republican State Convention had been held two weeks before. Senator Conkling, Mr. George William Curtis, and others addressed it; but not one of them had a word to say about the surrender of the metropolis to an autocracy, or of the character of the men to whom this ignominious betrayal had been made. How could they? The "credit" of it was "as much due" to "the Republicans as to the Tweed Democracy."

Nothing was left me to do but to await the issue of the portentous experiment. As to their frauds at elections, I had no means of knowledge more than other citizens; but I had sent to Albany a carefully prepared election law which had been

examined and approved by leading Republicans of this city. The Republican senators rejected it, and took Tweed's election law with Tweed's charter. The "Times" boasted over this election law as "by far the more substantial reform of the two." I feel scarcely able to enter into the comparison of the relative merits of the two measures. The "substantial reform" known as the election law was the means by which Mayor Hall acquired such immense power over the inspectors and canvassers, and all the machinery of the elections, that the Ring began to think they could get along without the voters. It suppressed the opposition of the practical politicians in the wards, who saw how it was capable of being worked. In the contest of 1871 it discouraged them from joining us more than any other power wielded by the Ring. In some districts men of great local influence openly said it was of no use to run a ticket so long as that power could be exercised against them. The reformers were generally appalled by it. I had confidence, because I counted on the intensity of the popular ferment as likely to permeate and weaken all the agencies of the Ring, and to swell the wave of opposition until it should sweep over all artificial obstructions.

If the value of a thing is to be measured by what it costs, we are thrown back to a statement made to Judge Davis of the price paid to the leading Republican senators. Five thousand dollars for the election law and for section four of the tax levy,— under which the six million dollars of the special audit were acquired,— was perhaps as cheap as ten thousand dollars for the charter. The agents of the Citizens' Association cost only a few offices; the "Times" threw itself in gratuitously. My defence, if I need one, for not stopping the Ring from cheating at elections is, that I tried to do so, but could not; I was beaten by the Republican senators and the "Times."

Soon after the disastrous failure to secure self-government for our people, a lawyer of this city came to me and said that the best thing for me to do was to endeavor to secure a good court of appeals. My recollection

Court of Appeals.

is, that the general term for this department—two of the three members of which have since been expelled for corruption—had at that time just been constituted. I felt that to make civil rights safe in the second and last appeal was of great value; and set about the work. In the meantime a distinguished gentleman from the interior came to propose to me to run as chief judge of the new court, and to assure me of a support which I understood would carry with it the State Administration and everything jealous of or hostile to me throughout the State. It was evident that I was considered less dangerous at the head of the court than at the head of the State Committee. I answered that I thought I should not be dependent on any such help if I desired the nomination, but that it was not in accord with my plan of life to desire or take the office. I did issue a private appeal for the formation of a good court to nearly all the Democratic lawyers of the State, and to other prominent men. Many of the foremost members of the Bar came to the Convention, and we nominated and elected five of the seven members of a court which has the complete confidence of the Bar and the people. After the judicial election I went on business into distant States until late in the summer.

I did not set my foot in Albany during the session of 1871.

Winter of 1871.

The "Times" frequently said, "Such men as Mr. Samuel Tilden have no real influence." If the "Times" meant no influence in what was then the political and legislative Sodom of the State, there is no exaggeration in the assertion. Men who are bought on great questions are in no situation to disobey on inferior matters which are really insisted on. Mr. Tweed was never so supreme over nearly the whole body of the Republican members as at that time, and with their aid could despise or suppress and punish every revolt on the Democratic side. He had moreover acquired the prestige of successful power. The Democrats had not in either House one vote to spare from the number necessary to pass a bill. But Mr. Tweed was no worse off that he was completely

dependent on his alliances with the Republicans. Nearly every bad measure passed without any opposition, or with only a sham opposition. The "Times" on one occasion complained that the root of the evil was in the apathy of the Republican party of the city. There was force in the statement. The prejudices, the party passions, the interests of ambitious men, make the opposition the natural organ of the discontents of society with the ascendant power, which at this time had some pretext for calling itself Democratic, though in truth it was a Ring of both parties. The combination had such control over the Republicans at Albany and in this city that a revolution in the Republican party was necessary to create an opposition; and without an opposition dissenting Democrats were powerless. In stimulating the party animosity of the Republicans, even though by vague appeals, or for merely partisan ends, the "Times" rendered valuable service in a preparation for the future. But time was necessary. It is wholly untrue that at any moment I was timid or selfishly reserved, or that I shrank from any responsibility.

I am not a newspaper, whose business it is to address the public every day, whose recurring want, more than meat or bread, is a topic, and to whom invective — even if without facts or evidence, provided it makes a sensation — is money, more money, in circulation and advertisements. Men not of the editorial vocation have to turn from their ordinary duties and habits when they appear before the public; and it is only on few occasions that they find the forum, or the opportunity, or the leisure. How many times did Mr. William A. Booth — who is mentioned with commendation by the "Times," and is truly an excellent citizen — or Mr. Jackson Schultz, or even Mr. Evarts appear during this period? I will not ask about the Chairman of the Republican State Committee. It is safe to conjecture that he was running errands for some branch of the Ring, and serving around the legislative halls for what are daintily termed counsel fees. I should have had a perfect right to wait until that Ring dominion over our million of

people — which the "Times" boasted was "as much" the work of "the Republicans" as of the "Tweed Democracy" — had matured its fatal fruits before I again renewed the attack which had been once betrayed and had failed; but, nevertheless, on some occasions I did intervene.

School system.

The revolution in the school system in the winter of 1871 was the favorite scheme of the master-spirit of the Ring. I publicly condemned it.

Code amendment.

The provision of the Code Amendment Bill which conferred on the judges a transcendent authority to punish for what they might choose to consider as contempts, was the measure which was to apply coercion to the Press and to speakers who should attack the Ring. What the two millions a year of advertisements, open to be given or recalled at the will of Mayor Hall, should fail to win, this summary power — since understood to have been devised by Cardozo, and designed to be wielded by him and Barnard — was to conquer. It was said — I know not with what truth — to be specially aimed at the "Times." Probably many an article of that journal, in the spring of 1871, which seemed to the public to be vague and wanting in definite facts, had point enough to the men who knew they had stolen fourteen millions since it helped them into power. At any rate, this scheme was the desperate resource of a domination, bold and blind, as it was ripening for a fall. In it were concentrated the fears and hopes of the Ring. It was passed without a dissenting voice in either House. Every Republican member voted for it or stayed away. The Chairman of the Committee of Conference, who manœuvred it through, was a Republican senator who admitted last year the "borrowing" in one instance of ten thousand dollars from Mr. Tweed which had not been repaid.

One evening in May, when I was temporarily confined to my house by illness, Mr. Randolph Robinson called to ask me to be chairman of a Committee of the Bar Association to go to Albany and remonstrate with Governor Hoffman against his signing this Bill. I declined to be chairman, but assented that

the meeting might put me on the committee, if it chose to do so, with the knowledge that I could not go, and said that I would write a letter against the Bill.

On second thought a hurried note was addressed to Mr. Evarts, who was chairman, that my letter might be sure of publication. It was paraded in the foreground of the controversy; it and its writer were constantly cited by the "Times." An issue was publicly declared, from which everybody knew I would not retire. If the Bill had not been vetoed, an open collision must have spread all over the State. After I had taken my position, I received from Francis Kernan and others assurances of co-operation in such a controversy.

The 7th of November, 1871, was the first day when a vote of the people could even indirectly retrieve the results of the legislation of April 5th, 1870. Tweed was in his office until April, 1874; Connolly until 1875, and Sweeney until 1875. They, with the mayor, were vested with the exclusive legal power of appropriating all moneys raised by taxes or by loans, and an indefinite authority to borrow. Practically, they held all power of municipal legislation and all power of expending as well as of appropriating moneys. They had filled the departments with their dependants for terms equally long.

The contest of 1871.

Strong position of the Ring in the city.

They wielded the enormous patronage of offices and contracts; they swayed all the institutions of local government,— the local judiciary, the unhappily localized portion of the State judiciary, which includes the Circuit Courts, the Oyer and Terminers, the Special Terms and the General Terms,— in a word, everything below the Court of Appeals. They also controlled the whole machinery of elections. New York city, with its million of people, with its concentration of vast interests of individuals in other States and in foreign countries, with its conspicuous position before the world, had practically no power of self-government. It was ruled, and was to be ruled so long as the terms of these offices continued,— from four to eight years,— as if it were a conquered province. The central

source of all this power was Albany. The system emanated from Albany; it could only be changed at Albany.

In my speech at the Cooper Institute in 1871 I said: —

"They stripped every legislative power and every executive power and all the powers of government from us, and vested them in half a dozen men for a period of from four to eight years, who held, and were to hold, supreme dominion over the people of this city.

"I heard my friend Mr. Choate say that the men in power had been elected by your suffrage. I am sure that was a slip of the tongue. The men in power were elected by no man's suffrage; They never could have been elected by any man's suffrage. They were put in power by the Act of the Senate and Assembly of the State of New York, without consulting us or any of us. The ground that I had taken is, that as the State had put these men on us, the State must take them off. That is the reason I differ from my Democratic friends of the rural districts, who say: 'What, will you carry a local controversy into the State Convention? Will you carry it into the politics of the State, and distract and disorganize the Democratic party?'

"I answered, 'It is too late to consider that question. For ten years the Democratic party has pledged itself to give back to New York the rights of self-government; and when it came into power it betrayed that pledge and violated that duty.'

"Alone I went to the city of Albany and recorded my protest against the outrage. . . . The plan was cunningly contrived and skilfully executed, but owed its success to a disregard of all moral obligations and all restraints of honor or principle. How was it accomplished? By taking a million of dollars, stolen from the taxpayers, and buying in the open market a majority in the two Houses of the Legislature.

"When I spoke against this charter before a committee of the Senate, Mr. Tweed sitting in the chair, I already knew that not more than one vote of the Democrats and not more than one vote of the Republicans would be cast against it; but I felt it to be my duty to the people of New York and to the Democratic party to record my protest against what I then deemed a crime against us and a betrayal of our principles."

The officers composing the Ring government of this city could not be removed, or their power curtailed or limited, except by new legislation. Such legislation could be made

only by the concurrent action of the Assembly, Senate, and Governor.

If they could hold enough of the senators to defeat the passage of a bill changing this state of things, they could resist public opinion and defy the vote of the people of this city, which might spend itself, without results, upon aldermen and assistants totally without power, and upon a mayor having little legal authority, and capable of being nothing more than a subordinate instrument of the executive departments.

Crisis of the contest.

The senators who had voted on the 5th of April, 1870, with but two dissenting voices, to create this state of things, did not come within the reach of the people until the election of the 7th of November, 1871, when their successors were to be chosen.

Pivot of the contest.

The 5th of April, 1870, and the 7th of November, 1871, were the two days of battle. The intervening time was but the interval between two battles. The period which preceded the election of the 7th November, 1871, was important and valuable only as a time of preparation. The objective point of the attack was the legislative power of the State, — the senators and assemblymen. The Ring saw that.

Ring plan of the campaign.

Early there came to me prominent gentlemen from the interior to propose that I should name all the delegates to the State Convention to be sent by the Tammany organization, and that thus there should be no contest. The object of the Ring was to retain the prestige of "regularity" in aid of the election of their nominees as senators and assemblymen. If they could hold the five senators from this city, they had no misgivings about holding the Republican senators from the country. At last, when I consented to have a conference with one of them on the basis of a resignation of all city offices and a withdrawal from the Democratic city organization and all political leadership, the surrender on my terms was refused, and their reliance on holding the Senate by means of eight Republican senators already secured to Mr. Tweed was avowed.

A passage of my speech at the Cooper Institute is reported as follows: —

"Mr. Tweed's plan is to carry the senatorial representation from this city, and then to re-elect eight, and, if possible, twelve of the Republican senators from the rural districts whom he bought and paid for last year, and to control all the legislation that might be presented there in your behalf; and it was because I had some misgivings that this might be done that I thought it was my duty personally to take the field and help you in this conflict.

"If I had felt that the Republicans could have carried the thing of themselves, it would have been pleasanter and easier for me to have stepped aside and let them do it. I felt it to be my duty to the honest masses of the Democracy, and still more to the people, — for party is of no value unless it can serve the people faithfully and effectually, — to take my stand with the advanced columns of reform and good government, to take my place there, and stand or fall with those who gather round me."

My plan of the campaign.

My plan of the campaign was in a single idea. It was to take away from the Ring the senators and assemblymen from this city. That was to storm the central stronghold on which their lines rested, while they were extending their operations over the whole State.

Their allies throughout the State in both parties would be rendered powerless, or would be dispersed. I feared most their allies in the Republican party. As it was, the Assembly was largely made up of men who had got themselves nominated by the Republicans, in the expectation that Tweed would come back, and such golden, or rather greenback, showers as he had scattered during the two previous sessions would descend upon them.

Offers of a surrender of all part in the State Convention and in the State Organization were continually made in every form, and weighty pressure was brought on me from powerful men all over the State to accept it, and so "save the party." I uniformly asked, "Who is to have the five senators and twenty-one assemblymen?" In a speech at the State Convention I made this issue. I said that the object of endeavoring

to get a recognition of the organization then controlled by the Ring, or of avoiding its direct repudiation, was "to go back and nominate twenty-one members of Assembly and five senators, and then to say to the uprising masses of the best intellect and moral worth of the people, 'If you do not vote this ticket, you are out of the Democratic party.'" I denied that the system of organization then in use in the city had any moral right to be considered regular or to bind the Democratic masses. I avowed before the Convention that I would not vote for any one of its nominees as assemblymen or senators.

In my speech at Cooper Institute I said: —

"A great many times that offer was repeated, and everything was tendered me except the Senate and Assembly of the State of New York. But I said that everything else was of no value for them to give, and of no value for me to take; that the legislation which should be made in respect to the city government, whatever else I would compromise, that I could not compromise, and I would not. I told the State Convention — being the nominal head of the Democratic party of this State — for the sake of perfect frankness and distinctness, and in order that I might not be misunderstood, I told them that I felt it to be my duty to oppose any man who would not go for making the government of this city what it ought to be, at whatever cost, at whatever sacrifice. If they did not deem that 'regular,' I would resign as chairman of the State Committee, and take my place in the ranks of my plundered fellow-citizens and help them to fight their battle of emancipation."

On this issue I staked my political existence and all my party relations throughout the State. I threw myself into the breach in order to inspire courage in the Democratic masses of the city to break away from the prestige of a pretended but sham "regularity."

How to overthrow the Ring in the popular vote of the city.

There was a Democratic majority in the city of at least forty thousand or fifty thousand, if all the honest, and only the honest, votes should be polled. The party organization in the city, which had been accepted by the State Convention for years

in preference to the other organizations that had competed with it, had fallen into the complete possession of the Ring, and had been made a close corporation, within which no contest could be waged against them so long as they held controlling power and patronage. All rival organizations and nearly all spirit of opposition had been crushed out under the operation of the enormous centralized dominion derived from Albany.

The despondency and disbelief in the possibility of carrying the election in the city against the nominees who would be in the interest of the Ring was deep, almost universal, and hopeless. It is seldom that 10 per cent of any party scratch the regular ticket. To the Democratic masses it was said, not only that the accused persons were innocent, but that even if they were guilty, a great organization ought not to be destroyed for the wrong of a few individuals; that the party was not responsible for them; and that the particular nominees were good men.

How were the votes of twenty or thirty or forty thousand rank and file Democrats to be detached? Nothing short of an organized revolt of the Democratic masses, under the best Democratic lead, with the most effective measures and with some good fortune, could accomplish so difficult a work against such extraordinary powers as were combined to uphold the existing system.

The first measure necessary was to break the prestige of the organization which the Ring controlled as the representative of the party in the eyes of its masses, and to do this by the act of the State Convention. That was no easy matter. To able men who sympathized with me it seemed impossible. It proved even more difficult than I expected. A party in power is naturally disposed to risk the continuance of abuses rather than to hazard the extreme remedy of "cutting them out by the roots." The executive power of the State and all its recently enlarged official patronage were exerted against such a policy; and since the contest of 1869, the Ring had studied to extend its influence

on the rural districts, and had showered legislative favors as if they were ordinary patronage. Without having, or having had for years, the power to give an office in city or State, I stood on the traditions of the older leaders and on the moral sense of the honest masses of the Democratic party.

The publication by the "Times" of what is called the "Secret Accounts" was completed on the 29th of July. They consisted of copies, made by a clerk, of entries in a book kept in the office of the comptroller. They showed the dates and amounts of certain payments made by the comptroller, with a brief description of the objects, and the names of the persons to whom the payments were made.

The time when I acted.

The enormous amounts, compared with the times and purposes, and the recurrence of the same names, created a moral conviction of gross frauds, — though, of course, not amounting to judicial proof against anybody on which a criminal or civil action would lie, or disclosing the real principals in the fraudulent transactions.

I soon became satisfied of the substantial truth of these statements by the futility of the answers on behalf of the city officers and by cross-examining a financial gentleman who came to me with a letter from a distinguished citizen, together with the form of a call for a public meeting which he wished me to head. The statements made me believe that municipal frauds had been committed immeasurably transcending anything I had ever suspected. They furnished, moreover, a sort of evidence capable of acting strongly upon the popular mind. I am a believer in the potency of definite facts in making an impression on the public; for that purpose I had rather have one fact than a column of rhetoric. The publication was made just as I was going into the country. In two or three days there, I formed my programme.

For so difficult a movement in the State Convention, co-operation was necessary. The first man I sought was Mr. Francis Kernan. His freedom from all entanglements, — whether personal or political, with corrupt

Mr. Kernan.

interests or corrupt men, — his high standard of public duty, his disinterestedness and independence, his tact and eloquence in debate, his general popularity and the readiness of his district to send him as a delegate, made him my necessary ally in the State Convention. After much telegraphing, I found he was in Albany on professional business. I went there, and passed a day with him.

It was, I believe, the 4th of August, 1871. That was within six days of the time when the publication of the "Secret Accounts" was completed; it was a month before the 4th of September, when the meeting was held at which the Committee of Seventy was created. It was three weeks earlier than I had moved in 1869, when my own fortunes were involved in a contest with the Ring. It was earlier than a political campaign in reference to the November election usually opens; it was more than three months before the election. So far from the "battle" being over, it was scarcely begun; so far from the Ring being "down," as the "Times" alleges, it was for months afterward confident of holding its own.

The programme then submitted to Mr. Kernan embraced everything which has been done since, except the impeachment of the judges. He was about to go to the sea-shore with a sick relative; and while his concurrence was given, particular measures were left for his consideration until his return. Ten days afterward I joined him at Albany, went with him to Utica, and received the assurance of his co-operation; we moreover had consultations with Governor Seymour, who was also in full sympathy with us. Mr. Kernan will recall the fact that at that first interview — contemplating the difficulty of the conflict — I said, and he agreed, that we ought to make the contest, even if we should fall in it.

On my way home I stopped a few days at Saratoga. There I met Mr. George Jones, of the "Times." I had known him twenty years. He spoke freely to me. I saw no indication that he thought the battle was over; he seemed rather to feel its stress. I told him I should appear in the field at the proper

time. Often afterward when I met him he referred to that casual interview with apparent satisfaction.

Some five or six weeks later, after Mr. Green was in as substitute for Mr. Connolly, I went into the comptroller's office. There sat Mr. Jennings and Mr. Jones. The former said: "We want an interview with you." Mr. Green kindly gave us a room in the basement. When we had arrived there, and were seated, Mr. Jennings said: "Do you see any daylight?" and went on to say, in words which I may not be able literally to repeat, that the contest was too exhausting to be continued very long. I stretched out my hand to him and said: "Be of good cheer! We shall win this fight."

Mr. Oswald Ottendorfer.

At Utica I had seen some gentlemen who professed to represent Mr. Ottendorfer's views. I hastened to see him as soon as I arrived at New York. He had accompanied me to Albany the year before, when I made the speech against the Tweed Charter. He was a very important element in the contemplated movement. His purity and elevation of purpose made me think he would join us, notwithstanding the great efforts which were made to prevent his joining: he did so.

Mr. O'Conor.

Averse to engaging personally in politics; at an eminence in professional renown, in social consideration, and in personal character which lifted him above rivalries and disposed everybody to defer to him so long as he abstained from fresh collision; entitled to consult his ease and the comfort of tranquillity,—Mr. O'Conor was nevertheless in complete sympathy with the right. I had often communed with him over evils which there seemed to be at the time no means to redress. I went out to Washington Heights to see him; I told him the hour had come. He said he would help according to his view of what he was best adapted to, and of what was most fit for him to undertake.

There were great legal difficulties in the way of getting investigation or redress. The aldermen, who were vested with a statutory power of compelling disclosure, were allies of the

Ring; the Legislature was not in session; for a long time there was no grand jury capable of making the traditionary inquest which had not been packed. The local authorities, which had power to order civil actions, if such would lie in their behalf, were in complicity with the wrong-doers; the officials who would conduct such actions were their appointees; the juries would be selected in their interest; and the judges, who dominated in the courts, were their instruments. Criminal proceedings were equally hampered. Well might the Mayor say to Garvey, as the latter has recently testified, "Who is to sue?"

As early as August I had discussed with Mr. O'Conor the right of the State by the Attorney-General to sue; but even that resource was unavailable, because we could not then count on the co-operation of that officer. When I suggested a new law appointing one or three commissioners; conferring on them full powers of compelling disclosure; vesting them with the right to sue; enabling them to lay the venue outside this county; giving preference to their actions; with other provisions to render the remedy speedy and efficacious,— Mr. O'Conor said he would take the head of such a commission.

It was these conferences which led Mr. Kernan and myself to vote for Mr. O'Conor — without his knowledge — as attorney-general. To the gentleman who was nominated I sent a message advising him of the necessity that he should satisfy the people of New York that he would exert the powers of his office in their behalf. He came to my house on the Sunday morning of October 15, with a letter dated the 14th, which was published on the 16th, containing such an assurance, and said he would authorize any suit Mr. O'Conor or I might advise. He had returned to Albany and communicated this agreement to Governor Hoffman before the delegates of the Committee of Seventy had their interview, on the afternoon of the 17th, at which Mr. Champlain announced his purpose to depute Mr. O'Conor.

With characteristic disinterestedness and public spirit, that trust was undertaken by Mr. O'Conor, with the declaration that he would accept no compensation for his professional work; and ever since, he has given his time and his great abilities and acquirements to the service of the people.

These conferences were in August, and before the Committee of Seventy was appointed. They did not wait for or depend upon any co-operation; they contemplated independent action. Other preparations for the State Convention were made. I accepted an arrangement to be upon the floor as the representative of my native district, which had always during the Ring ascendancy provided me that opportunity. I asked a few other gentlemen to come, but had not time to look after delegates in detail. I did, however, early in September, issue a letter to twenty-six thousand Democrats, reviewing the situation and calling upon them to "take a knife and cut the cancer out by the roots." Meantime an important event happened which could not have been foreseen.

Other preparations.

On the 14th of September Mr. Connolly applied to me, through a friend, for an interview. Without knowing its object, I gave it on the morning of the 15th. The most artful members of the Ring plotted to save themselves — to come in as parts of a new system, even as reformers, with added power — upon Connolly's ruin. In his distrust of them and fears for himself he sought advice.

Substitution of Mr. Green for Mr. Connolly in the comptrollership.

I began by telling him that I could not be his counsel, or assume any fiduciary relations toward him, and that he and all the others must surrender all office and all local party leadership, and recognize the fact that their careers were ended. To this he assented, but still wanted my advice. I counselled him that he had no right to resign his office into the hands of his confederates; that such an act would be a new wrong against the public. To his inquiry whether, if he remained, he could get money to carry on the government, I told him I would consult Mr. Havemeyer, and we would meet him again that evening.

Mr. Havemeyer came, but Connolly did not come. After consultation, Mr. Havemeyer went to Connolly's house; found him in bed sick; encouraged him; appointed a meeting at my house for the next morning at ten; and requested, as I had desired, that Connolly's counsel should come with him.

Meantime I had examined the law and found a singular enactment, by which the comptroller was authorized to appoint a deputy and confer upon him for a definite period all his own official powers. Mr. Havemeyer must have been informed of this, and consulted about the proposed action under it before he went to Connolly's, for he had agreed to assume the responsibility of public advice to Connolly to stay in, as Mr. Green could hold only as his deputy. Besides Mr. Havemeyer and Mr. Green, the only human being who had any intimation of the purpose was Judge Swayne, of the Supreme Court of the United States, who passed the evening with me, to whom I confided the matter, with whom I discussed the question of the right of the State to sue in such cases under the general rules of jurisprudence, and in the intervals of conversation with whom I prepared some of the papers.

In the morning Mr. Havemeyer and Mr. Connolly and his counsel came. I pressed Mr. Connolly to surrender the office into the hands of the reformers by deputing Mr. Green to exercise all its powers; that he had less to fear from the public than from his confederates; that if he threw himself upon the mercy of the public, and evinced a disposition to aid the right, the storm would pass him and beat upon the others. His counsel said it was a personal question. One of them stated the opposite view, taken by some of Mr. Connolly's friends. It was that if he would resign, a man should be put in his place who would have character enough to assume the whole duty of investigation, and would exclude the committee of which Mr. Booth was chairman, and that Mr. Connolly should be protected. It was disclosed that the counsel who presented this view had come fresh from an interview with Mr. Sweeney. At length Mr. Connolly consented, the papers were executed,

Mr. Green sworn in, and they left my house only to go to the office of the comptroller and put Mr. Green in possession. The "Times" seems to consider the acquisition of this office by the reformers at that stage of the contest as of little value. That was not its opinion at the time; it is not my opinion.

The possession of the comptrollership by the reformers was a fatal embarrassment to the Ring. It involved a publicity of all the expenditures of the departments, and was a restraint on those expenditures. It created doubt and dismay in all their action. It was an obstacle to such modes of raising money as had brought the charter through in 1870, and to the hope of reimbursing advances for such purposes. It protected the records, on which all civil and criminal actions must be founded, from such destruction as was attempted in the burning of the vouchers. Every investigation, including that of Mr. Booth's committee, were fruits of that possession. So also was the discovery of judicial proofs in the Broadway Bank, and the collection of such proofs, which continued for eight months afterward, with important results which have not even yet become public. It divided the influence of the city government in the elections and broke the prestige of the Ring.

Then began a struggle on the part of the Ring to force Mr. Connolly to resign, in order that Mr. Green's powers might cease. On the 18th of September the Mayor treated Mr. Connolly's deputation of Mr. Green as a resignation; and then, with singular inconsistency, assumed to remove Mr. Connolly, though he had lately declared he had no power of removal. The vacancy thus alleged to exist he, on two incompatible theories, each totally unfounded, proceeded to fill.

Efforts of the Ring to recover possession.

Early that morning I sought Mr. O'Conor. The freedom from doubt of the law was no security; the moral support of his great legal name affirming the validity of Mr. Green's possession was necessary. He examined the statutes, and had no doubt. He consented to reduce his opinion to writing, saying

that he would not take a fee, and inserting the explanation that the opinion was given at my request. It appeared in the "Evening Post" of that afternoon.

An attempt, under color of judicial process, forcibly to eject Mr. Green was anticipated. A carriage was waiting to take me to Judge Brady. If a judge could be found to vacate fraudulent orders as fast as they could be granted, it was well; if not, I had resolved the next day to open an issue in advance of the election of the new legislature, — a convention to revise the judiciary. Mr. O'Conor's opinion saved that day. Mr. O'Gorman, evading the legal question, advised the Mayor, as a matter of expediency, to acquiesce in Mr. O'Conor's opinion. The plot fell to pieces. But there were men behind the Mayor who would not yet give up the struggle. When Keyser alleged that his name on the warrants was forged, the effort was renewed. It was in resisting it that I struck on the clew which led to the revelations of the Broadway Bank.

State Convention.

The contest in the State Convention quickly followed. It is but fair to admit that what I asked the Convention to do was more than any party was ever found able to venture upon. It was totally to cut off and cast out from party association a local organization which held the influence growing out of the employment of twelve thousand persons and the disbursement of thirty millions a year, which had possession of all the machinery of local government, dominated the judiciary and police, and swayed the officers of the election. I still think that on such an occasion the greatest audacity in the right would have been the highest wisdom, and in the long run the most consummate prudence. If the Convention could not reach that breadth and elevation of action, it nevertheless did help to break the prestige by which the organization expected to enthrall the local masses. For myself, I at no time hesitated to avow, as my conviction of duty and my rule of action, that a million of people were not to be given over to pillage to serve any party expediency, or to advance any views of State or National politics.

For more than three months I devoted myself to this contest. Whatever seemed, on a general survey of the whole field, necessary to be done, I endeavored to find the best men and best methods to do, and, at all events, to have that thing accomplished. I addressed the Democratic masses. I constantly pointed out to the public the legislative bodies as the turning-point of the controversy. I entered into an arrangement with Mr. O'Conor and Mr. Evarts to go to the Legislature; and, when events afterward induced them to abandon the intention, I went alone. I invited the meeting at which the reform delegation to the State Convention was originated, and helped to form that delegation.

Other action.

On the eve of the election, when Mr. Wickham, who was chairman of the newly extemporized Democratic reform organization, came to me to say that they could not supply booths or ballots without ten thousand dollars beyond what they were able to raise, I agreed to provide it, and did so. With the aid of Mr. Edward Cooper I raised from personal friends, including my own contributions, for the legitimate purposes of the contest, about the same sum which I understand the Committee of Seventy collected from the whole community for similar purposes.

These investigations furnished the first, and for a long time the only, judicial proof of the frauds. They occupied me, and some four or five clerks and assistants, about ten days. The analysis of the results and their application as proof were made by myself, as well as the original discovery of the relation of the numbers, which was the clew to all the revelations.

Broadway Bank investigations.

The "Times" seems to ascribe the collection of judicial proof to Mr. Booth's committee. This is an entire error; nothing of the kind was attempted by that committee. The value of their Report was in its exhibition of the accounts of payments from the comptroller's office; it did not trace any share of the money to any public officer. That Mr. Booth was allowed to

inspect the accounts was due to the possession of the comptroller's office by Mr. Green.

This information, obtained from the Broadway Bank, established the fact that but one third of the nominal amount of the bills had ever reached the persons who pretended to be entitled to the payments, and that two thirds had been divided among public officers and their accomplices; and it traced the dividends into the actual possession of some of the accused parties. It converted a strong suspicion into a mathematical certainty, and it furnishes judicial proof against the guilty parties. On this evidence, and on my affidavits verifying it, the action by the Attorney-General was founded.

Speech at Cooper Institute.

At the great Reform meeting at the Cooper Institute I made a speech advocating a union of all the elements opposed to the Ring, without reference to State or National politics. This was done while I was the official head of the State Organization of the Democratic party. My action was regarded as questionable by some good men who judged it by the ordinary standard of political parties. All the secret allies of the Ring throughout the State were employed, aided by most of the executive patronage, in accusing me of sacrificing the success of the State ticket and the supremacy of the Democratic party in the State to my effort to overthrow the Ring. Complaints were inspired from high quarters that I had not kept back the Broadway Bank disclosures and deferred the action by the Attorney-General until after the election. This was the basis of an organized movement against me in the Assembly, continued and renewed for a whole year throughout the State. My own opinion was, and is, that the most vigorous and effective measures were necessary to overthrow the corrupt dominion over this city; that if they had not been taken with boldness, the immense power which had been created by the legislation of 1870, the whole local government machinery, with its expenditure and patronage, and its employment of at least twelve thousand persons, and its possession of the police, its influence on the judiciary, its control of the inspectors and

canvassers of the elections, would have enabled the Ring to hold a majority in the city, and would have defeated all adverse legislation at Albany.

And while I never hesitated to avow that the emancipation of our million of people was not to be made secondary to any other object by a citizen and elector of this city, I thought, and still think, the timid and false policy I was assailed for not adopting — if I know aright the many high-minded and independent gentlemen of the interior who would not have brooked any compromise with wrong — would have been far more disastrous to the State ticket in that election, and would have permanently compromised the Democratic party. It is to the eternal honor of the Democratic masses of this State that on the issues thus made with me successively for a whole year they gave me an overwhelming support.

Democratic reform vote in the city.

How largely the redemption of the city was due to the Democratic masses is easily shown. The vote for Willers, the Democratic candidate for secretary of state, was 83,326; his majority was 29,189. The vote for Sigel, the Union Reform candidate for register, was 82,565; his majority was 28,117. Willers's vote was nearly one thousand, and his majority more than one thousand the larger.

It follows that 28,653 Democrats who voted for Willers also voted for Sigel. Even that does not show the whole Democratic contribution to the reform victory; for at least ten or twelve thousand Democrats, dissatisfied that the State Convention had not gone farther than it did, voted the Republican State ticket. The whole Democratic vote cast for Sigel was little short of 40,000, against the 42,500 he received from all other sources. The result — so much more overwhelming than was expected by the public — not only changed the city representation in the legislative bodies of the State, but, in its moral effect, crushed the Ring.

So far from true is it that the "battle" was "over," as the "Times" alleges, when I entered it, the battle was not over till the polls closed. Even to the night before the election, general

despondency prevailed. All through the contest it was difficult to inspire the local politicians with confidence in our chances of success. Many whose sympathies, interests, and resentments were with us, held back, and some abandoned us at a late period. The Republicans in the city had little hope. The belief was general in the city and State and among all parties, even to the election, that we should fail, and that the Ring would hold a majority.

Further collection of proofs.

After the election it was urged by Mr. O'Conor, Mr. Havemeyer, and Mr. Green that I ought to continue the investigations by which the judicial evidence of the frauds should be collected and preserved, and that this work was more important than even the preparation of legislation. In deference to their views, I gave my time to the work during all the six weeks until the legislative session began, and in every interval at my command for many months afterward. When the investigations began, there were no means by which disclosure could be compelled that were not in the hands of the accused parties, except a grand jury, whose sessions were prolonged for several months. A vast mass of accurate information had been collected and preserved, which is the basis of nearly all judicial proofs that have been obtained.

Judicial reform.

It was the opinion of our best men, as it was my own, that a reform in the administration of justice, as it was carried on in this judicial department of the Supreme Court, was not only intrinsically the most important to the welfare, safety, and honor of our community, but was a measure without which every other reform would prove nugatory; and that the opportunity of effecting it at the last session could not be allowed to pass unimproved without leaving us for an indefinite period subject to the intolerable evils and scandals which had recently grown up, and to the world-wide disrepute they had occasioned. As a citizen and a lawyer trained amid better standards, I had seen the descent of the Bench and the Bar with inexpressible concern. I had often

questioned, with Mr. O'Conor, whether those of us at the Bar who had ceased to be dependent for a livelihood upon professional earnings ought not to feel ourselves under a providential call, on the first opportunity, to open to the younger members of the profession a better future than that which was closing in upon them, — a future in which personal and professional honor would not be incompatible with pecuniary success. I had advised a son of Francis Kernan, who came here to begin a career, to return to Utica rather than confront the degrading competition to which a young man would be exposed. In the heat of an extemporaneous speech at the Cooper Institute I had become committed to this cause.

It seemed to me a paramount duty to press a movement for that object with all the concentration and persistence requisite to success; and there never was a moment, by day or night, during all the session, when anything which it was possible to do could be safely omitted. There were several periods of general despondency, and frequent crises in which the cause had to be rescued.

It early came to the knowledge of Mr. Peckham, Mr. O'Conor, and myself that a large fund was attempted to be raised for the purpose of corrupting the committee and the Assembly in the interest of the accused judges. Even after the impeachment was adopted by the Assembly, when general despair was felt at the choice of managers, the lost ground was promptly recovered by a measure initiated by myself; it was an arrangement by which the selection of counsel was to be satisfactory to the Bar Association.

Attention to the completion of this object; to the conduct of the suits which had been begun; to the gathering in of the fruits of the investigations; and to other accessory work necessary to finish the original undertakings, — occupied most of the summer.

On the whole, I have given sixteen months of time to these public objects, with as incessant and earnest effort as I ever

Conclusion.

applied to any purpose. The total surrender of my professional business during that period, the nearly absolute withdrawal of attention from my private affairs and from all enterprises in which I am interested, have cost me a loss of actual income which, with the expenditures and contributions the contest has required, would be a respectable endowment of a public charity. The surrender of two summers, after I had shaped all my engagements to take my first vacation in many years, was a serious sacrifice.

I do not speak of these things to regret them. In my opinion, no instrumentality in human society is so potential in its influence on the well-being of mankind as the governmental machinery which administers justice and makes and executes laws. No benefaction of private benevolence could be so fruitful in benefits as the rescue of this machinery from the perversion which had made it a means of conspiracy, fraud, and crime against the rights and the most sacred interests of a great community.

The cancer which reached a head in the municipal government of the metropolis gathered its virus from the corrupted blood which pervades our whole country. Everywhere there are violated public and private trusts. The carpet-bag governments are cancers on the body politic even more virulent than the New York Ring. I felt impelled to deal with the evil here because an offence which is directly before one's eyes is doubly an offence, and because it was within our reach; while to renovate government throughout the United States is a work of great difficulty, taking time, large hope of the future, and long-continued efforts toward reformation. If the world cannot be changed, it is something to make one's own home fitter to live in.

A reaction must begin somewhere. I have not lost hope that free government upon this continent may yet be saved. I remember that nations have experienced great changes for the better, in manners and in morals, after long periods of decay. There are some good signs in our own horizon. Last

month, when a gigantic controversy of the stock-market reached the courts, none of the journals inquired, "Which side owns the judge?" At any time within the last three years that would have been the only theme.

The money-articles have ceased to treat their readers to admiring discussions of the relative dexterity with which men of colossal capital, first citizens of the metropolis, representatives of its moneyed aristocracy, contend with each other in feats which have a moral aspect about like cheating at cards. Since the swell of the paper money afflatus in 1863, the absence of such discussions is a refreshing novelty at our breakfasts. Even on the cheek of a member of Congress begins to rise a delicate hue of doubt in being discovered to have had a pecuniary interest in a public question on which he has voted. Amid the blackness of successful wrong which overspreads the whole heavens, are these little gleams of a revival of the public conscience. If its growth shall be as steady, as rapid, and as persistent as has been its decay during the last ten years, everywhere throughout the country will come revolutions of measures and of men.

If the work to which I have given so freely, according to the measure of my abilities, shall stand, I will not compete for its honors, nor care for falsehood or calumny concerning the part I have borne in it. If it is to fail once more; if the people of this metropolis, if the Republican citizens of culture and property, whose interests are deeply involved in a good municipal government, and who are now to show whether they will stand against bad measures in their own party, shamefully consent to a repetition of the fraudulent devices of the Tweed Charter of 1870, — theirs, not mine, will be the responsibility.

NOTE I.

THE IMPEACHMENT OF JUDGE BARNARD.

It was natural that the Bar Association should send their memorial to me for presentation; and the fact that they did so was no disparagement to anybody else. Instead of presenting it and making it the occasion of a speech, I retained it and gave it back to the committee, advising them to take it to Mr. Alvord for presentation. I deemed his co-operation important, thought his parliamentary skill and influence entitled him to a consideration which a section of his own party were not disposed to accord to him, and, for the interest of the cause, felt willing to invite his leadership, and to be myself a follower. Messrs. Van Cott, Judge Davis, Peckham, Barlow, Spier, Carter, and others will doubtless recall these circumstances. The committee had no reason to regret the adoption of my advice. Mr. Alvord gave his co-operation throughout the session and the trial.

On Friday, the 10th of May, the managers were chosen by secret ballot. The result was no doubt caused in part by an eager competition by some for the distinction, and in part by an organized effort to give the body a character as little hostile as possible to the accused. While some of the members were cordially accepted by the public, the choice on the whole created general, and, as I thought, excessive, distrust and a despair of the impeachment.

On the Monday morning following (the 13th) a gentleman went to Albany with me, had an interview with Mr. Alvord that afternoon, proposed to him that the managers should select Judge Comstock as their counsel, and such associates as should be satisfactory to the Bar Association, and brought me an assurance of the cordial action of Mr. Alvord for that end. Of course I do not say that he would not have done the same thing without suggestion.

In a debate which sprang up that evening I said that I was personally content with an honorable discharge from the duty of a manager, though I should not have declined that duty, delicately alluded to the question of counsel, and endeavored to reassure the public, expressing my confidence in the action of the managers

and as to the result of the trial. The subject was more fully discussed in a speech of mine on taking the chair at a meeting of the Bar Association on the 28th of May, an extract from which is subjoined: —

"One word as to the pending impeachment of Judge Barnard. I do not share the fears which have been expressed in the public journals as to the result. First, I know that in the investigation (which extended to all the witnesses the accused desired to produce, and with full cross-examinations) there was developed more impeachable matter, ten times over, than can be found in the eight principal cases of judicial impeachment (four resulting in convictions) which have occurred in this country. Secondly, I believe that the leading members of the Committee of Managers will faithfully prosecute the trial. Thirdly, I have the most absolute confidence in the abilities, professional skill, and earnest patriotism of the counsel who will represent the people, and on whom the real burden of the trial will fall.

"I respect the sentiments of my brethren of the Bar which demanded that I should continue still further my connection with the movement to purify the judiciary, — I mean, of course, as one of the managers of the impeachment, for you all know that I would not have acted as counsel. While I did not feel at liberty, by my own act, to withhold any service which you thought I could render to the great reform, my opinion differs somewhat from the public impression. The great work of investigation, of collecting evidence, and of securing sufficient concurrence and co-operation to put the accused on trial, — which has been an immense and difficult labor, — is done. The gentlemen whom I met in conference, after everything had been completed except to decide on the form of procedure, when I consented to impeachment instead of removal by concurrent resolution, — and I see several of those gentlemen present, — will remember that I then stated my difficulty in engaging in a prolonged trial during the summer.

"When the choice of managers came to be made, I did not feel called on to enter into a canvass or to form combinations. In everything else I had felt it my duty to exercise all foresight and every care, and to exert whatever power I possess to organize such elements as could be found for good ends. In this I felt entitled to leave every human being in the Assembly to his spontaneous action. If I should receive an honorable discharge, I had a right to accept it. I cannot be accused of selfishness if I did so with delight. Only one care remained for me; that was, to look after the choice of counsel. I communicated what seemed to be, in the

actual circumstances, the best suggestions to Mr. Alvord, and they met his prompt and cordial concurrence. I do not see that justice will be more likely to fail that the trial is to be conducted in the light of open day, with the eager scrutiny of the Bar of the State and country, and under the eyes of a watchful, apprehensive, and somewhat distrusting people.

"While what has been done toward purifying the judiciary is just cause of congratulation, you will appreciate the difficulties through which it has been obtained if you reflect that everything else in the way of reform has failed. It is known to you that when I consented to go to the Assembly, it was with a view to the judicial reform, and to certain other measures more particularly interesting the people of this city, and that in that work I expected the co-operation in the Legislature of Mr. O'Conor and Mr. Evarts. This arrangement was defeated by subsequent events. I believed that it was necessary to concentrate myself upon a very few measures in order to accomplish anything.

"The general demoralization growing out of the civil war and paper money had produced widespread effects. The corrupt power which had just been overthrown in this city had its origin in a partnership of plunder between men nominally of different politics, but in fact of no politics at all, and had established extensive affiliations throughout the State in both parties and in both branches of the dominant party, which now possessed three quarters of the Legislature. It had been necessary to the system that the capitol should be surrounded by an atmosphere of corruption. The ambition of some had been tempted; the interests of more had been addressed by making legislative business profitable; and the golden showers had sprinkled benefits in every direction. Some even, who would not take an actual part in the saturnalia, were content to be silent spectators or consenting witnesses. I never for a moment supposed that the knife and the cautery would be agreeable remedies, or that the silent partners of prosperous criminals would fall in love with those whose duty it is to detect and punish. I knew, therefore, that obstructions, under every pretext, were to be met at every step and to be overcome."

NOTE II.

[Here follow several pages of extracts from the "Times" and other papers, the character of which will sufficiently appear from the following summary of their contents, with which Mr. Tilden closes.]

These extracts prove, —

First, that at the time the charter of 1870 was passed, the "Times" knew its nature, objects, and effect; knew that it operated to put Tweed, Hall, and Sweeney in supreme dominion over the people of this city for a series of years, without any power to remove them, without any power in the people at an election to change the system or the men.

Second, that the "Times" not only knew beforehand that Tweed, Hall, and Sweeney were to be made dictators of the city for a long series of years by the charter of 1870, but after the appointments had been made it approved them. It continued from day to day during the summer its plaudits of Tweed, Hall, and Sweeney, and never intimated discontent with them till September 20, and then chiefly employed itself in attacking their Democratic adversaries. During this period the greatest frauds which have been since disclosed were perpetrated.

Third, that at the time the charter passed, the "Times" knew the corrupt means by which it was carried.

One of the means was a division of offices, agreed upon before the vote, between the Ring and corrupt Republicans. These agreements the "Times" avowed. It claimed the fulfilment of them. It asserted that the charter could not have passed without the aid of the Republicans. It said: "Mr. Hall and his associates will doubtless show a proper appreciation of the assistance rendered them by the Republicans." It commended the Ring for keeping its bargain, saying, four days after the division of offices had been carried into effect: "The Tweed party has not manifested the slightest disposition to evade or prevaricate."

The other means was the buying of the Republican senators and assemblymen with money. This also the "Times" knew before the passage of the charter. It said, April 3: "There was something to be bought, and plenty of money to buy it." It said afterward (Aug. 17, 1871): "Tweed and Sweeney had the votes already

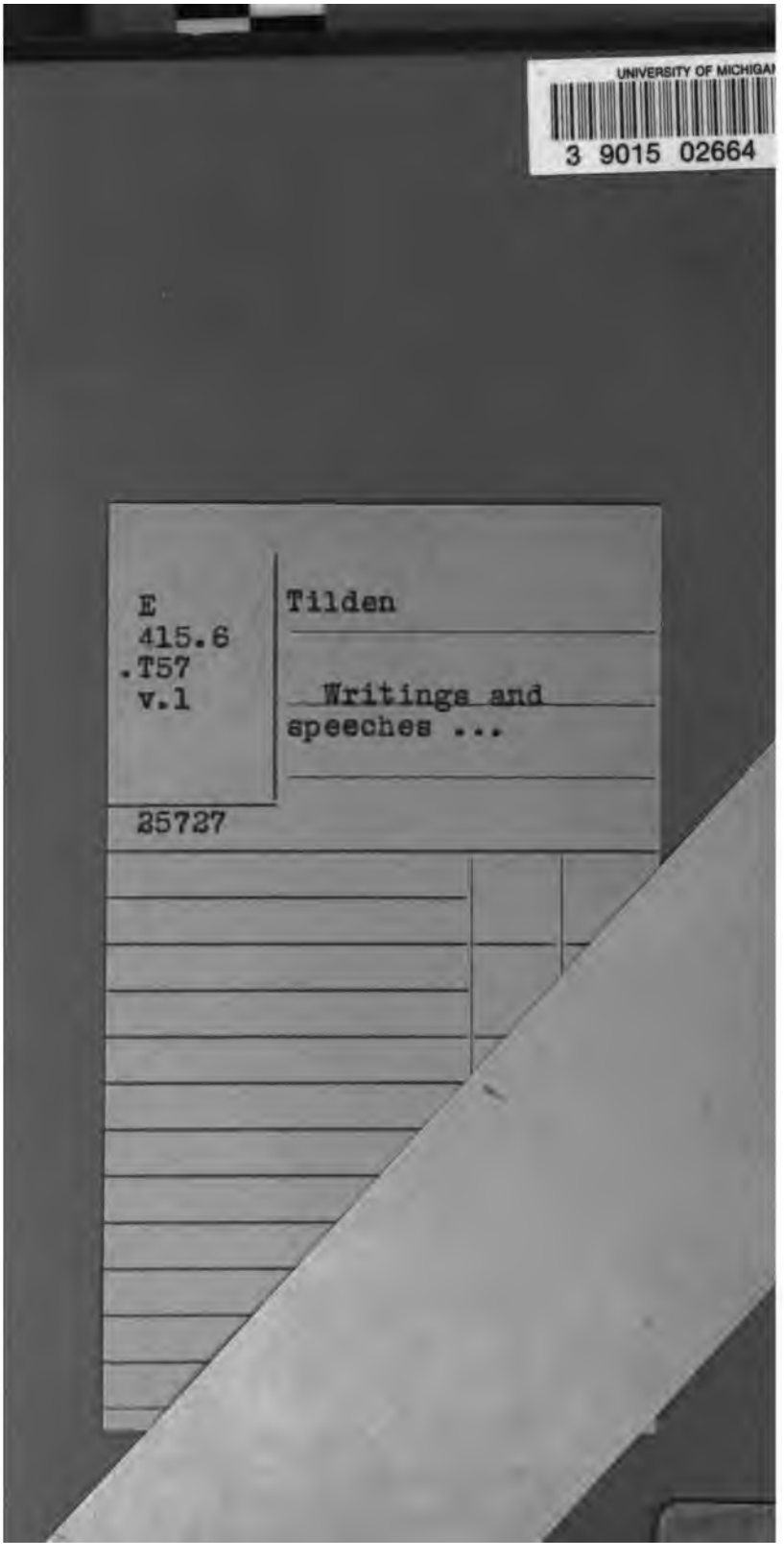
bought up. Of all the Republican senators, Senator Thayer alone is on record voting against it."

Fourth, that the "Times" knew, when the charter passed, it could not be done without a large support of the Republicans, and against the resistance and protest of Mr. Tilden and other Democrats. It asserted (April 12, 1870) that "but for the Republicans" the Tweed Democracy might have been beaten by Democratic resistance. It claimed (April 13, 1870) that the charter "could not have been secured without the help of the Republicans in the Legislature; and hence the credit is as much theirs as it is that of the Tweed Democracy." It declared the year after (Aug. 17, 1871) that "the tyranny of Tammany Hall had already consolidated an opposition which had the power to overthrow them," when the "idea of buying a charter through got possession of the minds of the magnates, and negotiations were promptly set on foot." It helped to carry the charter over the Union League, the "Tribune," the "World," the "Evening Post," and the "Sun," and against the open opposition of Mr. Tilden. It ridiculed the Union League and Mr. Tilden, and exulted in Tweed's triumph over him in 1870; but in 1871 it said: "There were a few indignant protests against the scheme uttered by such high-toned Democrats as Samuel J. Tilden; but they were without effect, for Tweed and Sweeney had the voters already bought up."

Finally, these extracts prove not only that Mr. Tilden's narration of the "conspiracy" against the city by the charter of 1870, and the action under it, and the means and objects for which it was obtained is correct, but that the "Times" knew all about the facts at the time, and that with that knowledge it joined the conspiracy and did its utmost to give success to the conspiracy. The part it took in that transaction was a calamitous mistake, as well as a great wrong to the people.

It might pass silently from the public memory if the "Times" had not revived the discussion of these events by an effort to apply whatever of credit it gained in 1871 for aiding to undo its own work of 1870 to the consummation of a still greater crime in 1873, — the creation of a new Ring, on the ruins of the municipal reform movement, by a new charter which imitates the fraudulent devices of the Tweed charter of 1870; and for the purpose of serving that end had not employed the elaborate and numerous false statements which have made an answer necessary.

END OF VOL. I.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